United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B p/s

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume X—Pages A-6121 to A-6800

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York,
One St. Andrew's Plaza
New York, N. Y.

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON,
345 Park Avenue,
New York, N. Y. 10022.
(212) 644-8000.
of Counsel,

CURTIS, MALLET-PREVOST,
COLT & MOSLE,
100 Wall Street,
New York, N. Y. 10005.
(212) 248-8111.

STANLEY S. ARKIN, P
600 Third Avenue,
New York, N. Y. 10016.
(212) 869-1450.

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PAGE

Relevant Docket Entries A-1
Indictment. A-10
Judgment. A-37
Trial Transcript. A-44
Government's Opening Statement. A-156
Defendants Henry L. Hoffman and
Howard Friedman's Opening Statement. A-207
Defendants AMREP Corporation and ATC
Realty Corporation's Opening Statement . . . A-237
Defendant Irving Blum's Opening Statement A-244
Defendant Herman Oberman's Opening Statement. . . A-246
Defendant Solomon Friend's Opening Statement. . . A-249
Defendants Daniel Friedman and Chester
Carity's Opening Statement A-270

Witnesses for Government:

Berit Hampe:
- Direct A-295
- Cross. A-365
- Redirect A-401
- Recross. A-404

Helen Henry:
- Direct A-405
- Cross. A-472
- Redirect A-635

Theodore R. Schreier:
- Direct A-652

Howard Mandel:
- Direct A-749
- Cross. A-1065
- Redirect A-1112

PAGE

Peter Zaknich:
Direct A-1128
Cross. A-1282
Redirect A-1335

Otto Steve Bondy:
Direct A-1374
Cross. A-1489
Redirect A-1524
Recross. A-1531

Allen Seder:
Direct A-1541
Cross. A-1579
Redirect A-1615

William J. Finnen:
Direct A-1620
Cross. A-1669

Ann Greenberg:
Direct A-1714
Cross. A-1784
Redirect A-1820

David Jones:
Direct A-1823
Cross. A-1852
Redirect A-1901

Morton Lederman:
Direct A-1907
Cross. A-2010
Redirect A-2073

Nicholas Thomas Masone:
Direct A-2087
Cross. A-2175
Redirect A-2218

Elinor DeWitt:
Direct A-2230
Cross. A-2262
Redirect A-2307

PAGE

Daniel Monaco:

Direct A-2309
Cross. A-2379
Redirect A-2425
Recross A-2431

Donovan [illegible]tter:

Direct A-2436
Cross. A-2515
Redirect A-2518
Recross. A-2522
Redirect A-2522

William Evans Brindle:

Direct A-2525
Cross. A-2534
Redirect A-2546

James Davis:

Direct A-2547
Cross. A-2570
Redirect A-2593

Khadijah Mohammed:

Direct A-2597
Cross. A-2615
Redirect A-2626
Recross. A-2631

Dennis Finnerty:

Direct A-2639
Cross. A-2665
Redirect A-2694

Leon Switt:

Direct A-2695
Cross. A-2724

Anna Bonavisa:

Direct A-2747
Cross. A-2777
Redirect A-2810

PAGE

Leon Fox:
- Direct A-2817
- Cross. A-2867

Selma Switt:
- Direct A-2891
- Cross. A-2910
- Redirect A-2954

Linda Davis:
- Direct A-2960
- Cross. A-2983
- Redirect A-2994

Patricia Candace Miller:
- Direct A-2996
- Cross. A-3038
- Redirect A-3068

Darlene McCorkle:
- Direct A-3070
- Cross. A-3166
- Redirect A-3260
- Recross. A-3268

Lawrence Perlmutter:
- Direct A-3269
- Cross. A-3556
- Redirect A-3664
- Recross. A-3717
- Redirect A-3718

Harriet James:
- Direct A-3720
- Cross. A-3785
- Redirect A-3833
- Recross. A-3841
- Redirect A-3841

Gustave Alfons Mols:
- Direct A-3842
- Cross. A-3891
- Redirect A-3933

PAGE

Morris Gusowsky:
Direct A-3937
Cross. A-3962
Redirect A-4025

Kenneth C. Neiswander:
Direct A-4037
Cross. A-4055
Redirect A-4089
Recross. A-4092

Charles Woodward:
Direct A-4092

Albert I. Pierce:
Direct A-4205
Cross. A-4294
Redirect A-4370
Recross. A-4439

George L. Carruthers:
Direct A-4464
Cross. A-4600
Redirect A-4766

Ralph Alphonse Avellanet:
Direct A-4787
Cross. A-4842
Redirect A-5021

Lemuel Raymond Seay:
Direct A-5048
Cross. A-5080
Redirect A-5097
Recross. A-5121

Richard L. Musgrove:
Direct A-5102
Cross. A-5124

PAGE

Peter Olquin:
  Direct A-5133
  Cross. A-5156
  Redirect A-5191

Ronald A. Williams:
  Direct A-5197
  Cross. A-5248
  Redirect A-5301

Samuel A. Kaufman:
  Direct A-5316
  Cross. A-5328
  Redirect A-5356

Geneva Clymer:
  Direct A-5358
  Cross. A-5387
  Redirect A-5420

Charles M. Clymer:
  Direct A-5422
  Cross. A-5423
  Redirect A-5428

Adam P. Sporzynski:
  Direct A-5477
  Cross. A-5508
  Redirect A-5570

Jack Morden:
  Direct A-5662
  Cross. A-5683

Richard W. Gray:
  Direct A-5798
  Cross. A-5812
  Redirect A-5865

Antonio Reyes-Guerra:
  Direct A-5870
  Cross. A-5885
  Redirect A-5939

PAGE

Witnesses for Defense:

Dick Kent:
- Direct A-6268
- Cross. A-6286
- Redirect A-6293
- Recross. A-6294

Tomas William Sennett:
- Direct A-6295

John B. Kearney:
- Direct A-6323
- Cross. A-6343
- Redirect A-6417

Raymond Frappier:
- Direct A-6422
- Cross. A-6437
- Redirect A-6458

Hugh J. Graham:
- Direct A-6469
- Cross. A-6501
- Redirect A-6545
- Redirect resumed A-6895

Reverend John B. Rupley:
- Direct A-6581
- Cross. A-6605
- Redirect A-6641

Joyce Davis:
- Direct A-6659
- Cross. A-6689

Reverend E. Scott Byers:
- Direct A-6730
- Cross. A-6745
- Redirect A-6752

Marion Quinn:
- Direct A-6754
- Cross. A-6772
- Redirect A-6782

PAGE

Grete Vives:
  Direct A-6785
  Cross. A-6805
  Redirect A-6831

Grover E. Nash:
  Direct A-6836
  Cross. A-6845
  Redirect A-6855
  Recross. A-6857

Ruth Linderman:
  Direct A-6859
  Cross. A-6874

Ruth V. Mellenbrook:
  Direct A-6898
  Cross. A-6929

Jose Luis Yguado:
  Direct A-6941
  Cross. A-7007
  Redirect A-7156
  Recross. A-7203
  Direct resumed A-7278
  Cross. A-7290

Government's Summation. A-7505
Defendant Howard Friedman's Summation A-7626
Defendant Henry L. Hoffman's Summation. A-7733
Defendants AMREP Corporation and ATC Realty Corporation's Summation A-7750
Defendant Rio Rancho Estates' Summation . . . . . A-77[illegible]7
Defendants Daniel Friedman and Chester Carity's Summation A-7793
Government's Rebuttal Summation A-7891
Court's Charge to Jury. A-7960
Defendants' Requests to Charge. A-8197
Government's Requests to Charge A-8271
Minutes of Sentence A-8357
Indictment 75 Cr. 1023. . . . . A-8397
Defendant AMREP Corporation's Notice of Motion to Sever Defendant Friend. A-8439
Motion Pursuant to Rule 14. . . . . A-8440
Gallantz Affidavit in Support A-8441
Winslow Affidavit in Support. A-8452
Memorandum in Support A-8459
Reply Memorandum in Support of Motion by Defendant AMREP Corporation to Sever Solomon H. Friend. A-8488

PAGE

Friend Notice of Motion to Dismiss or Sever. A-8496
Friend Affidavit in Support. A-8499

I. Parker's Affidavit A-8502

Friend Notice of Motion to Sever A-8504
Glendon Affidavit in Support of Motion for Severance A-8506
Arkin Affidavit in Support A-8531
E.B. Winslow Affidavit in Support. A-8536
Memorandum of Defendant Solomon H. Friend in Support of Motion to Sever A-8543
Friend Memorandum in Support of Motion to Dismiss. A-8583
Friend Memorandum in Support of Motion to Strike A-8601
Friend Reply Memorandum in Support of Motion to Sever A-8616
Friend Reply Affidavit in Support of Motion to Sever . . . .
Friend Reply Affidavit in Support of Motion to Sever A-8628
Arkin Reply Affidavit in Support A-8631
Schreier Affidavit in Support. A-8633
Glendon Reply Affidavit in Support of Defendant Friend's Motion to Sever. A-8634
Winslow Affidavit in Support of Defendant Friend's Motion to Sever. A-8637
Montoya Affidavit in Support of Defendant Friend's Motion to Sever. A-8639
Bertoch Affidavit in Support of Defendant Friend's Motion to Sever. A-8641
Mori Affidavit in Support of the Motion by Soloman H. Friend for a Severance A-8643
Greene Affidavit in Support of the Motion by Solomon H. Friend for a Severance A-8645

PAGE

Lilley Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8647
Schreier Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8649
Parkoff Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8651
Bastone Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8653
Waldman Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8655
Carity and Friedman Notice of Motion for Dismissal of the Indictment, Suppression of Evidence, and Severance of Defendant Friend A-8657
Fleming Affidavit in Support of Motion to Dismiss, Suppress Evidence and Sever a Co-defendant. A-8659
Memorandum in Support. A-8686
Carity and Daniel Friedman Reply Memorandum in Support of Their Motions to Dismiss and Sever. A-8713
Defendants Hoffman and Howard Friedman Notice of Motions A-8726
Defendants Howard W. Friedman and Henry L. Hoffmans' Motions. A-8729
Arkin Affidavit in Support of Defendants' Motions A-8730
Arisohn Affidavit in Support of Defendants' Motion for an *in camera* Inspection of the Grand Jury Minutes. . . . A-8750
Winslow Affidavit in Support of the Motion of Defendants Howard W. Friedman and Henry L. Hoffman to Dismiss. A-8756
Memorandum of Law in Support of Motions made by Defendants Howard W. Friedman and Henry L. Hoffman. A-8863

PAGE

Reply Memorandum in Support of the Motions of Defendants Howard W. Friedman and Henry L. Hoffman for a Dismissal of the Indictment and an in camera inspection of the Grand Jury Minutes. A-8930

Governments' Table of Authorities. A-8946

Government's Memorandum of Law in Opposition to Defendants' Non-Discovery Motions A-8975

Hynes Affidavit in Opposition to Defendants' Motions. A-9157
Affidavit of Alan J. Kappeler. A-9171
Defendant Friend's Notice of Motion. A-9200
Defendant Friend's Notice of Motion. A-9202
Friend Affidavit in Support of Motion for Reconsideration of Motion for a Severance A-9205
Glendon Affidavit Submitted in Connection with the Annexed Motion. A-9210
Friend Memorandum in Support of Motion for Reargument A-9212
Government's Memorandum of Law in Opposition to Defendant Friend's Renewed Motions for Severance and Dismissal and the Motion of Friend and Rogers and Wells to Permit Rogers and Wells to Withdraw from the case. A-9219
Friend Reply Affidavit A-9227
Arkin Affidavit in Connection with the Renewed Motion of Defendant Friend. A-9233
Gallantz Affidavit in Joining the Renewed Motion for a Severance of Friend A-9236
Lavinsky Affidavit on Renewed Motion for Severance. A-9237
Order to Show Cause for Severance. A-9255

PAGE

Glendon Affidavit in Support of Renewed Motion to Sever A-9257
Friend Memorandum in Support of Renewed Motion to Sever A-9279
Friend Memorandum in Support of Motion for Acquittal, or, Alternatively, for Severance A-9311
Friend Memorandum in Support of his Objection to Admission of Evidence concerning Grand Jury Production of GX66 . . . . A-9361
Lavinsky Affidavit in Opposition to Offer of Grand Jury Testimony of Defendant Friend A-9366
Lavinsky Supplemental Affidavit in Opposition to Offer of Grand Jury Testimony of Friend A-9378
Memorandum in Opposition to the Introduction of the Grand Jury Testimony of Friend in a Joint Trial A-9390
Arkin Affidavit in Opposition A-9405
Objections of Defendants Carity and Daniel Friedman to Prosecution's Further Offer of Friend's Grand Jury Testimony A-9408
Objections of Defendants Carity and Daniel Friedman to Offer of Defendant Friend's Grand Jury Testimony A-9409
Friend Supplemental Objections to Designation of Grand Jury Testimony A-9410
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9414
Government's Memorandum of Law in Support of the Admissibility of the Defendant Friend's Grand Jury Testimony A-9420
Arkin Affidavit dated 10/18/76 . . . . A-9451
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9454
Friend Reply Memorandum in Support of Objections A-9460
Memorandum of Corporate Defendants Objections to Friend Grand Jury Testimony A-9466

PAGE

Friend Reply Memorandum in Support of Objections A-9468
Weidner Affidavit of Service A-9474
Per Curiam Decision of Second Circuit Court of Appeals A-9475
Friend Objections to Grand Jury Excerpts Designated by the Government for Offer into Evidence A-9487
AMREP Corporation's Objections to the Proffered Grand Jury Testimony of Solomon H. Friend A-9495
Government Response to AMREP's Objections to Friend's Grand Jury Testimony A9504
Friend Amendment to Objections to Grand Jury Excerpts A-9509
Friend Reply Memorandum Relating to Designated Excerpts A-9511
Government Response to Friend's Objections to the Designated Portions of Friend's Grand Jury Testimony A-9519
Notice of Motion A-9527
Arkin Affidavit in Support of Howard Friedman and Hoffman Applications to Sever their Trial from that of the Corporate Defendants A-9528
Memorandum of Law A-9530
Order of The United States Court of Appeals for the Second Circuit on Oct. 26, 1976 . . . . A-9542
Government Memorandum A-9543
Government's Evidence Memorandum on Proof of Misleading Statements in a Mail Fraud Scheme A-9545
Government Memorandum on Defendants' Knowledge of State Disclaimers A-9551
June 30, 1976 - Order Metzner, J. A-9561
July 23, 1976 - Order Metzner, J. A-9564
September 17, 1976 - Order Metzner, J. A-9570
September 17, 1976 - Order Metzner, J. A-9579
October 27, 1976 - Order Metzner, J. A-9581
November 1, 1976 - Order Metzner, J. A-9584
December 30, 1976 - Order Metzner, J. A-9587

PAGE

Government's Trial Brief pp. 10-22 . . . . A-9589
December 30, 1976 - Order Metzner, J. A-9602
Letter from Edward B. Winslow dated
March 3, 1977 . . . . A-9604
Carity and Daniel Friedman Memorandum
In Support of Post Trial Motions A-9608a

prosecutable period, therefore rendering him liable.

Lastly, they contend that his retirement, though final, was not an affirmative withdrawal as contemplated by law.

If there is any validity to the concept which they contend links Mr. Oberman to his post-retirement activity, then it would mean that never would there be repose in respect of a case where the statute of limitations is alleged for in a scheme such as this, if one existed, it would be possible to hail people to court virtually in perpetuity.

There is no doubt that the defendant Oberman retired in 1969 almost two years before the first count mailing in this case. In its prosecution, the government has failed to recognize a vital distinction between conspiracy and mail fraud and that distinction is best made in the words of Judge Hand of this circuit in which he said in the Van Riper case, which is referred to in my brief, that "the conspiracy counts add nothing of substance to the charge except as it relieves the prosecution of the necessity of showing that the connection of all defendants to be charged at the date of the posting of the letters laid in the indictment."

And Judge Hand goes on to emphasize the

implications of this distinction with respect to the burden that is placed upon the government by saying that "the crime consists in the posting of the letter and if the defendant was not in the scheme when the letters were posted, he was not a principal or an accessory to the crime when that crime was committed."

Again, the government, in spite of Van Riper, with which they are allegedly familiar, contends that the significant link is that pre-retirement transactions, contemplated mailings, marry him to the count mailings in the prosecutable period.

In facts and in law virtually identical to this case, the case of Blue, which is also cited in the memorandum, the government argued there exactly as it argues here. That was a case where the land sales involved cemetary plots. Four salesmen actively engaged in the sale of plots, all of which contemplated numerous mailings, resigned prior to the prosecutable period. There, too, the very victims whose sales they had solicited, were bombarded by mailings in addition to which other salesmen engaged in the scheme solicited them into the prosecutable period.

The judge in that case, following the Van Riper case in this very circuit and citing United States Supreme

Court cases, stated that the "failure to place the defendants in the scheme at the time of the mailing is fatal to the prosecution and it went beyond that and said the mail fraud scheme is indeed a very harsh one and participation in a scheme completely outside the cognizance of federal law becomes, ipso facto, a crime, if the mailes are subsequently used; the use of the mails carries back to the scheme and binds both together in criminal liability."

Now, it is crystal clear that after his retirement, Mr. Oberman did nothing whatever in respect of the activity of the defendants.

In addition, the Blue case completely disregarded the standard concept of withdrawal, that the prosecutor urged.

An interesting point raised in the Blue case was that, and analogizing it with the case against Mr. Oberman, in 1969, there was no criminal act in being. Under the Blue case, the criminal act comes into being in 1971, the first count mailing. In 1969, there was nothing from which Mr. Oberman could withdraw; there was no crime in being; there was only business activity.

It is only in 1971 that with the mailing the scheme is married to the mailing and a crime for the first time is fixed as to date and that is the burden of the prosecution, to show that at that specific time, Mr. Oberman was in it.

(Continued on next page.)

The prosecution analogizes this case improperly with conspiracy. There is no doubt whatever that in respect to the rules of evidence conspiracy and scheme are similar, but with respect to the fixing of the date of the crime they are entirely different.

In a conspiracy case there is a crime in being, a substantive crime in being, so that it may be argued that if one is to withdraw, he has to stop going to the constable as some of the cases have sat or stepped on the fuse, but in 1969, your Honor, there was no fuse to step on; there is no conspiracy in this indictment. There is only mail fraud. In 1969, there was no crime in being.

Carry one step further, however. The resignation here, even if the government's contention is correct, does satisfy the rule in Borelli upon which they rely for there are two ways according to Borelli that you retire from scheme. Can you call a constable in the stepping on the [illegible] case with which I am sure your Honor is familiar or you retire by making it known to the others that you are retiring. There is no doubt everyone knew Mr. Oberman retired and there was no fuse to step on. The fuse was unlit, your Honor.

The record is entirely devoid of any proof that

Mr. Oberman participated in any scheme even prior to 1969. The government alleges that the purchase of the property, the first and the second time, coupled with a conjectural or prognostic statement that he made to a so-called analyst, namely the 5 per cent statement which I'm sure your Honor recalls, suggests that that proves that he and the corporations intended to develop only about 5 per cent of this property and then abandon it. The proof is entirely devoid of anything to sustain that conclusion.

Beyond that, all we can really infer from his pre-1969 conduct, that he was a person knowledgeable in respect of desirable lands to develop.

I might interrupt myself. It seems to me that the government has constructed this case entirely upon the so-called Avellanet report. I think that the cross examination of Mr. Fleming and Mr. Arkin, amply proved that that was a scientific hodge-podge and a patchwork quoting many sources which themselves are not worthy of much credence.

Based on a mathematical formulation which was exploded not only by the cross examination but I dare say by some of the questions your Honor put, that is.

More significantly, Mr. Avellanet testified on cross examination, though contained no where in the report, that it was the fixed policy of this corporation to develop the land and to provide homes for all who came. He said, and I believe I am quoting him, that it was his clear impression that they intended to so develop.

Now, despite the fact that the government's theory, Avellanet, in my opinion, emerges independent as a tarnished theory, the government failed to recognize at all what he did believe and say that the land would be developed for all who would come. In fact, there was a dream. There was a dream for these defendants as well as for the purchasers to have a home out there and Avellanet said it could be accomplished.

One of the ironies in this case is, this government and their agents by their very act of peppering the southwest with subpoenas, followed by a spade of publicity, created a very hysterical condition --

MR. DEVORKIN: Objection.

THE COURT: Overruled.

MR. RUBINO: -- that stopped the sale, that stopped the development and the sale, and frustrated the accomplishment of the dream.

I respectfully suggest, your Honor, and recommend that the defendant Oberman's motion for acquittal be granted and be granted speedily.

I say one more thing, your Honor. It seems to me that the law of this land should demand more than the proof that has been elicited in this courtroom before it permits the acts of government to label decent men as criminals.

Thank you.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, I will address myself initially to the scheme and respond to Mr. Fleming and to Mr. Arkin's argument with respect to the scheme. I will also address myself with respect to the defendants Howard Friedman and Henry Hoffman. Mr. Kaufman will address himself to the defendants Daniel Friedman, Chester Carity and Solomon Friend. Mr. Devorkin will address himself to the defendants Herman Oberman and Irving Blum.

I would request that at the end of the argument, we had been alotted an hour and a half yesterday to respond to the arguments, that I then have a few moments to respond to the --

THE COURT: I don't think you need anything additional. The other stuff that was moved doesn't belong in the case. There are four I have reserved decision on. It will take you three seconds to complete that. Go ahead, Ms. Hynes.

MS. HYNES: Your Honor, Mr. Fleming in his argument has characterized this case as a contract case. Understandably Mr. Fleming would like to ignore and disregard the promotional material, the films, the sales scripts that have been introduced into evidence and testimony which has been established that they were authorized, that they had strict instructions to follow the sales, that the company material, promotional material was created at AMREP, distributed by AMREP and was used by salesmen, was authorized to be used by salesmen and was in fact used by salesmen.

This case involves a scheme to sell land as a sound and profitable financial investment.

Now, Mr. Fleming and Mr. Arkin have stated that they don't know what the term "good investment" means, that the indictment doesn't spell out the term "good investment" and therefore this case must fail because of the lack of the definition "good investment."

The promotional material, the sales scripts, the film, spells out very clearly what these defendants were represented this land to be and what the good investment they were selling to these people were.

The sales scripts which were the scripts given by the speaker in the front of the room, prior to a contract being signed, and these were the statements, the material inducements to get people to sign the contracts, and that's what this case is concerned with: What were the representations, materials and inducements to get people to sign contracts to buy land as was represented to them to be a sound and profitable financial investment which could be resold at a profit.

What was said to them is very clearly set forth in the evidence. The sales scripts used by the speakers are in evidence. For example, Government Exhibit 314, which is the script used in August of 1972, states that Albuquerque can only grow in one direction, in the path where Rio Rancho is located, "as a matter of fact today, it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates." This is 1972.

There are also statements in the speaker's presentation, these are documented facts. Mr. Fleming and Mr. Arkin argue that these were merely opinions. These were not presented to prospective customers as opinions at all. They were presented to prospective customers as documented authenticated facts and the sales scripts we have in evidence state that very clearly. It is not a matter of opinion with respect to where the direction of Albuquerque would grow. It was represented that it had to go through Rio Rancho first. That was where the growth had to be. That's in August of '72.

Beginning in 1966, the script in evidence as Government Exhibit 315 and again there is a statement, and again there are also statements in this script that talk about authentication of the statements that have been made in the script and that script at page 6 says that there is only one direction that the city can grow, where Rio Rancho is located and that the city planners of Albuquerque have given an awful lot of attention to Rio Rancho because this is where the city must grow to, grow into, and grow out of.

Your Honor will recall Mr. Carruthers stated that statement was simply not accurate.

The statements have been made in the scripts, promotional material and materials that the city is hemmed in on three sides and again can only grow through Rio Rancho Estates. No where in the promotional film, in the scripts and in the promotional material that was distributed to the customers was there any statement that this is merely our opinion as to what will happen. It was presented as a stated fact that this was absolutely the only set of facts that they had to deal with, that this was where the growth of Albuquerque had to go, it was the only place that the city of Albuquerque could go. The fact that the city is hemmed in on three sides which we talk about the mountains to the east and reserved land, as Mr. Musgrove said, yes, there are mountains to the east, government reserve land but you can put another Albuquerque in the area that remains between the natural barriers between the government and military reserve land.

With respect to what was being said about this land as a good investment, the testimony has been repeated again and again. This was represented as an investment program. Again, the scripts that are in evidence, the authorized sales presentation that had to be made and if it wasn't made directly as that presentation is presented the salesmen were supposed to be fired, those scripts are in evidence and that evidence indicates and states very clearly that this is a land investment program, it is an opportunity to make money. There is no dispute here what the good investment was. The good investment was an opportunity to buy this land, to have it appreciate in value, the comparisons between this land and other forms of investment, the rate of return that could be expected on buying this land which was indicated to be be 25 per cent and that you could resell it at a profit.

Now, in Government Exhibit 315, which is another script for a speaker's presentation, the following statement appears, "Your investment has resale value. In 18 months this land will not be left and people like yourselves will be in the resale market."

It is very clear how this land was being sold. It was being sold as an investment which would appreciate in value, the letters that were sent to the customers, the statements that were made to the customers all stated it was increasing in value, it had increased in value and the statements were it had resale value. There were examples given in the promotional pamphlet, This is My Land, which was one of the main promotional pamphlets distributed to prospective purchasers and that pamphlet contains examples of sales and resales in the Albuquerque area and it was used to show people what they might expect to get on their land.

Mr. Carruthers testified with respect to those examples, with respect to some of those examples, he was not able to testify with respect to all of them, but with respect to the examples he could testify to the examples were commercial land in Albuquerque, industrial land in Albuquerque. There were pieces of land that were not comparable to the land that was being sold at Rio Rancho Estates.

Finally there was another example of Quaker Heights which in the promotional pamphlet which has been marked Government 384, 388 and 389, the example was given for Quaker Heights and it said a few blocks from Rio Rancho. Mr. Carruthers testified indeed it was five and a quarter miles from Rio Rancho Estates.

The clear import, your Honor, of the entire inducement to sign the contract was to buy this land as a sound and profitable financial investment, an investment that could be resold.

There is no question what is a good investment. A good investment is one that increases in value and that you can realize a profit on.

Government's Exhibit 316, another script of a speaker's presentation represents that this is an opportunity to make a great deal of money, and that investment is the main reason for being here this evening because this is a land investment program. So, the good investment was an opportunity to make a lot of money. There isn't any dispute about that on the evidence that's in this case today.

Again, in 373, which is another script in the speaker's presentation it states, "Albuquerque's growth offers you an opportunity to make a great deal of money" and then goes into the Albuquerque is bursting at the seams and investment is the main reason for being here, that it is utterly impossible for the city to expand beyond Rio Rancho without first going through it. The entire impact and import of the sales presentations was to convince the customer that the only place that Albuquerque could grow was through Rio Rancho Estates, and there is no question about that.

There is also in evidence a map which has been used based upon the testimony and identification by various customers, the map which is 158-F in evidence and also 271 in evidence has been used since at least 1966 according to the testimony of Mrs. Greenberg who identified it and through the latter part of 1973, as Mr. Perlmutter testified, with respect to the HUD disclaimer statement on the top of 271. This map very clearly shows the arrows that are right at the doorstep of Rio Rancho Estates as being the only direction that the city can grow, and there is very little question in this case as to what those representations and what the material inducements were.

Mr. Arkin and Mr. Fleming focused on two points: One, what is a good investment and the scripts tell you very clearly why this is a good investment. Two, Mr. Arkin and Mr. Fleming focused on the direction of growth and they say that was really just an opinion. Well, if you read the sales presentations and the literature was not presented as opinion. It was presented as a documented authenticated fact.

Let me just deal with the evidence that shows that Rio Rancho was not the only direction that Albuquerque could grow to.

Mr. Carruthers took the stand, Mr. Pierce, Mr. Seay, Mr. Neiswander, Mr. Musgrove, Mr. Avellanet, all these individuals testified that the growth over the period of time that we are talking about in Albuquerque has been to the northeast, and I will focus on Mr. Avellanet in a moment.

Mr. Carruthers has testified that indeed the northeast was the area where the direction of growth was going in 1966. He also testified with respect to Government Exhibit 384 in evidence, which again is "This is My Land" which is a copyright dated 1966. The statement that appears on page 8 which states that Albuquerque's future growth pattern is predetermined, it must take place toward the northwest, he says that was not factually accurate and not correct, and "This is where most of the new growth activities are taking place." That was also factually inaccurate.

Indeed, the testimony here has established overwhelmingly that the directionof growth and the amount of absolute growth in Albuquerque has been over the entire period of time to the northeast.

A lot has been said about the 1985 land use plan and density. I would just like to address myself to that for one moment.

Mr. Fleming and Mr. Arkin chose to use average growth density to try to get around the situation of the 1985 Land Use Act placing a population of 185,000, and a finding that there was more than sufficient land in the study area to accommodate that population, indeed there was more than sufficient land to accommodate a population of 1.7 million. In 1975, when that plan was replaced by Government Exhibit 53, there was still a finding that there was sufficient land in Albuquerque using a low density of three dwelling units per acre to have a population in excess of one million people.

Now we get to the situation of density. When you use the density which was the lowest density of three dwelling units per acre and this was the density the city planning people used as their lowest possible density in 1985, and also the density used by Mr. Avellanet in his report which he characterized very modest and indeed the evidence shows it was very modest, your Honor. One thing has to be stressed. When you talk about density of three dwelling units per acre in planning terms that also takes into account other uses in that land, and Mr. Avellanet so testified.

Let me direct myself to the testimony of Mr. Avellanet on that. The low density figure of three dwelling units per acre was on developed land and as your Honor pointed out in a colloquy with Mr. Fleming, when Mr. Fleming was using gross average density, that crude developed and undeveloped land and there has been testified in this case that in Albuquerque there are many types of land. For example, there is the rural land along the river which is really devoted to farming and the city has a policy determination to keep that rural land devoted to farming. There are also areas of vacant land within the city, but when you talk about the developed areas, and you use a figure such as three dwelling units, a low figure, Mr. Carruthers testified that that in fact -- let me direct your Honor's questions to Mr. Carruthers where this was established and this begins in Mr.

Carruthers' testimony at 4432. Your Honor asked Mr. Carruthers how he got the figure three, for three dwelling units in developed areas and the witness says: "If you look at the predominant single family residential development in Albuquerque the majority of it is occurring in densities of three to four dwelling units per acre," and you asked, "Now?" And the witness says, "That has been the pattern over the last 20 years. But, we are talking about two different things here. We are talking about developed property, not total gross acreage of the city with all the vacant land," and that was the distinction.

Then your Honor went on and said in response to Mr. Fleming's question:

"Q You are assuming full development at a density you projected?

"THE COURT: No, a density which is now in developed areas."

He is using three dwelling units per acre based on a 20 year history and that he says is a low figure.

The next thing that has to be emphasized is when in planning terms you use the three dwelling units per acre. You also take into consideration other uses that occur on that land. For example, Mr. Avellanet testified:

"Q And what is the density for developed portion?

"A Of Albuquerque in 1962 it reports a density of approximately ten persons per acre.

"Q And what is included in that area?

"A All residential use, commercial use, industrial, including some open land, public lands, including some open lands."

Now we get to the ten people per acre. You have three dwelling units per acre and I think the figure in Albuquerque at that time was 3.6 people per dwelling unit, and you got roughly ten people per acre. But, in planning terms that also includes not only residential but it includes residential use, commercial use, industrial, open land, public land and vacant land. And, that is the testimony. So when Mr. Avellanet and Mr. Carruthers are using a low density figure of three dwelling units per acre in planning terms, and it is set out in all of the reports that are in evidence, that three dwelling units per acre includes and has a factor figured in there for residential, schools, open space, industrial, and vacant land. And, Mr. Carruthers' testimony reflects that and Mr. Avellanet's testimony reflects that. Mr. Carruthers' testimony also reflects that three is reasonably low.

As a matter of fact, in the 1985 land use plan, the number three dwelling units per acre were only given to this yellow portion and this yellow portion here again is that river bottom property, and over here on the foothills of the mountains. So, in fact, when Mr. Avellanet used three dwelling units per acre in the report, it was indeed modest. It was more than modest. It may have been stingy but he was being very careful, and I think if you evaluate Mr. Avellanet, that's the personality. He was being very careful. He was being very conservative. He used three dwelling units per acre. He also was being very conservative in choosing what land he was saying was capable of development. If you recall his testimony, he did use the Simms property but he only used the Simms property, he only used the property that was available -- I think he said east of I-25.

(Continued on next page.)

Now, this is I-25, your Honor. It doesn't even take in -- sorry; yes, east of I-25. It doesn't take in this area which is west of 525. Mr. Avellanet's testimony is that he didn't want to engage in overkill. He could see, based upon his analysis, what the direction of growth of Albuquerque was. He testified there was abundant land in Albuquerque and for the purposes of his client, he was making the point that the trend of growth has been to the northeast and he substantiated that trend of growth in his report and the entire report, your Honor, is in evidence and it is hardly a roughshod, shallow report. It is a very detailed analysis of how he reached those conclusions.

The trend of growth was to the northeast. Indeed, Mr. Musgrove, when he testified, also said that the trend of growth was to the northeast and it's very hard to change those trends. So, Mr. Avellanet, knowing that, took a portion of property that was available in the northeast and made calculations as a result of that.

Now the property he took was 42 square miles of the Simms property and, again, leaving a great deal out, the portion that was west of I-25, and using the density of three dwelling units per acre, which allows for other use, commercial, industrial, schools, vacant land, advised the company that there is sufficient land just in that area to accommodate 365,000 people and he also came to the conculsion that the population projections for Albuquerque for 1985, the most realistic population projections were 630,000 people as opposed to the 825,000 people which was used for the transportation study.

Now, that also makes sense based upon the testimony in this case because even Mr. Carruthers said the only dispute in the planning department was where they were going to get 825,000 people to put into this vacant land; that he believed that the high projections weren't the probable projections but those high projections of 825,000 were only used for transportation study purposes, to provide for a cost analysis of, if you are going to put in a highway, if you are going to make it a two-lane or four-lane you plan in that way and Mr. Pierce confirmed that and testified in that respect as well.

So, for transportation planning purposes, the figure of 825,000 was used. When Mr. Avellanet said to his client, listen, you are not doing a transportation study; you are concerned with selling this property and what you can do with this property, based upon realistic projections for your needs, he said, the realistic projections -- and hindsight proves that he is right -- but the realistic projections which were carefully set forth in that study and he reviewed all of the population studies that were current at that time, was 600,000.

And he said the growth trend is to the northeast and of that expected doubling to 600,000, in 1985, there is enough room just in that area that he designated to take care of it.

Now, he also testified that having come to that conclusion, he didn't even go into the areas in terms of what was available on the west side of the city.

Mr. Avellanet testified on the stand that in his opinion, the only opportunity that Rio Rancho would have at all to try to penetrate the local market in Albuquerque was to use the area east of Highway 525 which was not offered for sale locally and still has not been offered for sale nationally and that is the bluff area overlooking the river and if you followed his recommendations in the report, which was to have a high income development there, which would allow for horses and whatever, in that event, you might be able to penetrate the local Albuquerque market.

But even then, his conclusion was that you would not be able to penetrate it probably up to about 18 years and that penetration would be small and it would be select.

So, Rio Rancho was advised in 1966 that one, the growth of Albuquerque was going in exactly the opposite direction, the trend of growth; two, Mr. Avellanet testified on the stand that with respect to the land that was offered nationally which is west of Highway 528 , that he did not see any competitive advantage to that land; indeed, he believed that the land that was soth of Rio Rancho on the west side had better advantages. It was closer to the city of Albuquerque and that is what is charged in this indictment, your Honor -- that there was, one, sufficient land within the city of Albuquerque to take care of even the most optimistic growth probjections; every city report that we have dealt with has stated that without reaching Rio Rancho. None of the studies included Rio Rancho for a good reason, they would never have to get there.

Two, Mr. Avellanet pointed out that on the west side there was attractive land on the west side that was competitive and would take the growth. Mr. Arkin and Mr. Fleming have tried to turn the case around to say that what we were really saying was that the growth of Albuquerque was not the northwest quadrant of Bernalillo County. They weren't selling the land on the basis that the growth would go to the northwest quadrant of Bernalillo County. They were saying that the growth was going to go to Rio Rancho and if you read the sales scripts it's very clear that is what they are saying.

Now, our case is that yes, there is growth there, on the west side. Indeed, there will be more growth on the west side of Albuquerque but that land is closer to the city of Albuquerque and will have no effect on the demand for lots at Rio Rancho and that's what this case is about. That there has been growth in all sectors, in all quadrants of the city and that Rio Rancho was not the only place that Albuquerque could grow into, through and out of and that is the basis upon which these people bought land as a sound financial investment.

Now, the next thing that Mr. Arkin and Mr. Fleming complain about is that the government is limiting this claim that this was a good financial investment to the fact that people cannot resell in the Albuquerque market but the point is that that is why it was sold to these people; because the Albuquerque market was going to be the market that was going to give them the resale potential.

Now, we are not only relying upon Mr. Avellanet to tell them that there was no local market. These people are saying in their films, and as recently as the film in 1974, that if your city needed four times as much land, if your city needed four times as many houses, it's obvious from the whole impact of these promotional materials that this whole pitch was that the demand was going to be from the influx into Albuquerque and that the market was going to be the Albuquerque market and that Albuquerque was going to be pushing out to Rio Rancho and creating that demand and that is the problem that Mr. Fleming and Mr. Arkin have no answer to.

This land was not sold so somebody could resell it in Podunk, Idaho. It was sold so that you could resell it in the Albuquerque market. The examples were given to the Albuquerque sale and resale.

Now, your Honor, we have given you trial briefs which really have set forth the scheme here but I have to mention certain items and they are that Mr. Fleming has stated that the purchasers here got what they bargained for, that they knew it was raw land, they knew it didn't have utilities, they knew they had an exchange right and a right to cancel.

Let me address myself to that.

These purchasers did realize that what they were buying was undeveloped land. In the sales presentation, the tape that you heard, I think it's referred to as predeveloped land and that's precisely the point.

These people bought land, knowing it was unimproved land at the time they bought it but they bought this land being told that this company was going to improve it with utilities and the contract that Mr. Fleming refers to specifically states:

"If, if utilities have not reached your lot, the lot that you are buying at that sales dinner when you are ready to build, then you can exchange."

The exchange was the fall-back provision; it was supposed to be the guarantee but there is no question that these pepole bought this land believing that this company was going to place utilities in their land eventually, some of them may have been given years, how much time it would take and others wouldn't have been given the specific time it takes but the point is that they were told that they were paying for a lot that would have utilities.

Now, the defendants have set aside areas where they have placed utilities in those areas.

Mr. Fleming and Mr. Arkin keep talking about the development. The government does not contend that there is not a development there. The government does not contend that there was never any intention to develop any part of Rio Rancho. There was an intention to develop a portion of Rio Rancho and Mr. Avellanet's testimony is very clear on this -- the portion of Rio Rancho, national purchasers that Rio Rancho expected to move to the property, was 5 per cent. Mr. Avellanet said that they had water for 4,000. He believed that on the basis of the 55,000 acres that approximately 4,000 lots were expected -- that these defendants expected 4,000 lots to be built upon and today, as of May, 1975, according to Government's Exhibit 1002, there are 1800 single family dwellings on this land.

The point here, your Honor, is very important:

People were paying for utilities in all of the land, in all of the 77,000 acres. These defendants were only placing utilities on a demand basis. The demand basis the defendants knew --

THE COURT: Wait a second. The witnesses didn't expect utilities when they bought it. They knew they were weren't there.

MS. HYNES: They expected utilities eventually, your Honor.

THE COURT: Eventually.

MS. HYNES: Yes, I don't disagree with that. The point is the price included utilities. They expected utilities eventually and if utilities had not reached it, then they could exchange but clearly the purchase price is including the price of utilities and I don't think that there is any dispute about that.

The point is that they are not -- they are buying raw land at the time they buy it but they are buying it with the promise of these defendants that they will improve it with utilities, eventually, eventually. And that is a very important point because if these defendants are not going to improve it with utilities, then they have not gotten what they have bargained for.

Mr. Avellanet's testimony is very clear on this. Mr. Rubino has stated that Mr. Avellanet testified that they intended to develop the property. Well, Mr. Avellanet testified that they intended to develop a portion of the property but that they did not intend to develop the entire property.

So, if you sold off 77,000 lots on a representation that eventually you are goingto put utilities in and you know eventually you are not going to put utilities in, then you, the purchaser, has not gotten what they have bargained for because certainly the resale potential of a lot without utilities is far less than what these people bought when they bought a lot expecting utilities eventually to reach that land.

Now, Mr. Avellanet's testimony is very clear on this. He says in response to my question on redirect. "Was it your impression that the people from Rio Rancho had serious intentions of developing the entire 55,000 acres at that time?

"A Clearly not.

"Q Can you explain that to the judge and jury?

"A Rio Rancho operated on the operatic assumption that 25 per cent or less of the people would come and they set aside this land as a reserve to accommodate development for people who bought lots and would want to live in the Rio Rancho Estates development."

And that is Mr. Avellanet's testimony on what the defendants intended to do about development.

That takes care of the national market, 5 per cent or less.

MR. RUBINO: Excuse me, your Honor, I hate to interrupt but that is not the whole testimony with respect to the intention of the parties.

THE COURT: We'll worry about that.

MS. HYNES: I am reading pages 4879 and 4880 on my redirect.

Your Honor, in April of 1969, a HUD report which is in evidence states there are 315 homes on 55,000 acres. In August of 1969, these defendants bought another 37,000 acres, beginning in August.

Based upon the evidence in this case, there is no serious intention of thgese defendants and there could not be any reasonable basis for these defendants to believe that they could develop not only the entire 55,000 acres but the entire 91,000 acres. They state to Mr. Avellanet what their operatic assumption was with respect to the national market -- 5 per cent or less -- and Mr. Avellanet said that would have worked out at most to 4,000 houses. And that was on 55,000 acres. He told them what their prospects were for the local market.

So, when you start putting a caveat that you are only going to put utilities based upon demand and you know what that demand is going to be from the national market which would be 5 per cent, from the local market which would be insignificant, and yet you sell this land at a price that includes utilities for all of the lots, saying that you will place utilities in all of the lots when you know the demand will never warrant it, then you are not getting what you bargained for and Mr. Fleming is incorrect on this record.

Now, Ms. Thompson has raised, in motions to strike, in portions of the indictment, paragraphs that go specifically to this point. I am concerned with time, your Honor, but it's important that this indictment not have paragraphs stricken from it when there is in fact evidence in the record.

One, Mr. Avellanet's testimony is also very clear with respect to having them reserve portions of the property which they will put the utilities in to take care of that 5 per cent that is going to come.

Government's Exhibit 885 in evidence is an inventory summary of lots that have been, and acreage that has been reserved for management.

Also, Mr. Zaknich testified that only 10 per cent of the lots were reserved for management.

There is an exhibit, 93, in evidence, which is a map that designates the core careas. It is far away less than the number of lots in the area that is sold nationally. There is a computer printout, Exhibit 887 which shows that 77,000 lots have been sold. If you compare the printout 887 with 77,000 lots sold with Government's Exhibit 885 which shows the number of lots that have been reserved and the acreage reserved for management, there simply is not enough land set aside to take care of exchanging every lot.

The other part of the arrangement, your Honor, is on the basis of Mr. Fleming's cross examination with respect to development problems of North Albuquerque Acres and this also refers to a paragraph in the indictment that Ms. Thompson has moved to strike, the testimony in this case is that North Albuquerque Acres has been platted in a gridiron fashion and the testimony is that Rio Rancho -- the part that sold nationally is platted in a gridiron fashion.

The testimony with respect to North Albuquerque Acres is that the ownership there is scattered ownership. The testimony here is that Rio Rancho ownership is scattered ownership. It sold, according to the testimony of Mr. Perlmutter, in 37 states and 77,000 lots have been sold. Mr. Carruthers' testimony has been that there is a difficulty in reassembling this land when it is gridiron platted and when it is in individual ownership. That testimony supports the government's contention that the way in which these defendants were selling the land nationally, all over, in 37 states, platted gridiron, which will postpone the eventual development of this.

There is also a HUD report in evidence, which is 1001.

1002, which specifically states and this is the most recent HUD report, dated May 8, 1975, and this report states as clearly as it can be stated that if you do not have a lot in the building area with utilities, that it is too costly to extend utilities to your lot and that if utilities are extended to your lot you, the purchaser, are going to have to pay for that extension of utilities and not AMREP or Rio Rancho or these defendants and that statement appears on page 8 of Government's Exhibit 1002.

I submit to your Honor that there is ample evidence in this record to support every paragraph of the indictment.

Again I could go on and delineate more in terms of --

THE COURT: I suggest you get to your individuals, if you want to have time for Mr. Kaufman.

MS. HYNES: Your Honor, I want to reserve my rights on the motion to strike paragraphs of the indictment because I can give you citations --

THE COURT: The time is your problem. Your hour is up at five minutes to twelve.

MS. HYNES: With respect to the defendants Howard Friedman and Henry Hoffman, the evidence is that Howard Friedman was an officer and director, member of the executive committee of AMREP since 1961, and president since 1968.

The evidence is also that Mr. Howard Friedman signed all of the SEC statements that are in evidence which delineate the business of the company, how its sales promotions are conducted, the fact that there is not -- there is a difficulty for people to resell these lots and also that the motivation for buying these lots is resale at a profit.

Mr. Friedman has attended sales dinners, received reports on various sales aspects of the company. He has discussed price increases and he has discussed with various sales people such as Mr. Mandel, Mr. Zaknich, the shortage of land, the marketing concepts. He signed the contract for overseas sales. He had conversations with Mr. Perlmutter in respect to overseas sales. He had conversations with respect to tours and the successfulness of the tours and the upgrades. He signed New York State filings in 1971, '72 and '73 saying that the sales inducement for purchase of this land is investment and that's Government's Exhibits 439 and 440. He received reports on construction. He signed a HUD report in June of 1972 which reflected that anticipation of 80,000 dwelling units in this property, and the same paragraph says that only 830 as of that date were occupied. He received the Harman, O'Donnell report that was written by Mr. Avellanet. He is listed on Government's Exhibit 935 as the recipient of the memo which outlines and discusses in detail the Avellanet report and I might also point out that there is no evidence in this record that these defendants rejected that Avellanet report; no evidence at all. The only evidence in this record is that that report was given to the defendants, that that report showed and told these defendants that the claims that they were making --

THE COURT: Wait. Don't say there is no evidence. That's the defendants' case. We haven't reached that yet.

MS. HYNES: I am saying at the point we are now there is no evidence.

THE COURT: Obviously.

MS. HYNES: Cross examination of Mr. Avellanet didn't bring out any of that evidence, any.

THE COURT: Didn't have to. No defendant has to bring anything out.

(Continued on next page.)

MS. HYNES: In summary, your Honor, Mr. Howard Friedman has been involved in the acquisition of the land, in the marketing of the land, he has attended sales dinners, is aware of price increases, he has been advised of tour operations and he is involved in the planning aspects of the company. There is more than sufficient evidence to submit this case to the jury with respect to the testimony of Howard Friedman.

With respect to the defendant Henry Hoffman, Mr. Hoffman has also been an officer and director of AMREP since 1961. He has held offices in Rio Rancho and has been a director of ATC. He is a principal shareholder. As a matter of fact, I think he owns the most number of outstanding shares out. Mr. Hoffman purchased the land. He signed SEC filings that stated that the unsold land may be considered raw land which is to be improved by the company only by construction of roads. The evidence in this case today is that that's exactly the only thing that has been done to the land that has been sold nationally. It has been improved by the construction of dirt roads.

SEC filing filed by Mr. Hoffman also states the purchasers are buying with a view to profiting in increasing value of the land and that customers find it difficult and that the principal business of this corporation was the subdivision of large tracts of land. The SEC statement set out in detail and I won't go into every single one of them at this point how the company operates and how the company conducts its business. But more importantly, Mr. Hoffman, the testimony has established, is a principal in Carity-Hoffman Associates; in-house advertising agency and that Hoffman wrote the ads here. Mr. Mandel testified to that. Mr. Mandel testified that he had conversations with respect to advertising with Mr. Hoffman. He also testified that Mr. Hoffman prepared the script at the sales dinners. Mr. Hoffman went to sales dinners. Mr. Hoffman was involved in making the film "Your Golden Future" and "West Side Story," he reviewed dunning letters sent to the customers. He received and was included in decisions on price increasing, according to the testimony of Mr. Zaknich and finally Mr. Hoffman received the Harman, O'Donnell report.

He is also listed as the recipient of the memo discussing that report in detail, Government 985, he has been involved in planning decisions reflected in Exhibit 918 and revision of the sales contracts for the purchasers including the exchange privilege which is Exhibit 604.

In short, Mr. Hoffman has been involved in every aspect ov this company: the acquisition of the land, the advertising in films, sales dinners, price increases, planning, sales contracts, SEC filings and he is the principal stockholder in this company.

In short, your Honor, there is sufficient evidence to submit this case to the jury on Mr. Hoffman.

I will now turn to Mr. Kaufman.

MR. KAUFMAN: Your Honor, with respect to Chester Carity, he has been an officer of AMREP since 1961 and has been the executive vice president since 1968, and a director of AMREP since 1961, and officer and director of Rio Rancho Estates since 1961, and present director of ATC Realty since 1963. There has been overwhelming evidence connecting Carity. He was involved in Rio Rancho since 1961 when the initial 55,000 acres were purchased for $178 per acre. Carity signed the SEC filing which reflects that transaction and he signed Government's 402, another SEC filing showing an additional transaction of the 37,000 acres purchased between 1969 and '71, and that price transaction Carity knew the average price per acre for Rio Rancho which has been touted as the best hedge against inflation has increased a grand total of $2 an acre over an eight to ten-year period.

A number of filings signed by Carity show his knowledge exactly how AMREP showed Rio Rancho land. He reviewed all the promotional materials reviewed in the sales dinners and scripts used by the speakers at the dinners. Mandel testified to that and so did Perlmutter.

He reviewed or received other material such as delinquency letters which touted it as a good investment and he received a procedure manual. He instructed subordinates when to open up additional sales offices and interviewed sales brokers and attended sales meetings where he spoke about such things as boosting party attendance.

He reviewed sales activities in the many sales offices and visited many sales offices and attended many meetings. He commented on sales training and listened to a tape of a dinner party. He was involved in regular price increases, which persuaded customers that the value of Rio Rancho was continually increasing.

I would like to refer your Honor to Exhibit 128 in evidence, "Good news, 10 per cent price increase," "Today we received a telegram informing us of a guaranteed price increase. The value of the property you acquired at Rio Rancho Estates is about to become more valuable. Yes, we have been notified that selling prices will be raised definitely December 22, 1973." It is clear those price increases were used to persuade the customers their land was becoming more valuable.

Carity was also involved in the acquiring of the additional 37,000 acres between 1969 and '71 at a time when Rio Rancho customers were being told Rio Rancho was almost being sold out. Carity received reports on the results of the company-sponsored tours to Albuquerque in terms of solidification and upgrade and knew that seminars were being conducted to instruct employees on how to conduct these tours so as to maximize profits and standardize the procedure. He was also familiar with the VIP program which was designed to sell additional land for investment to people who already owned Rio Rancho land as well as other property, the home sit program, and hospitalit- suite program. He knew there was a need for resale program since he has been told many people were inquiring about resale and they were unable to resell.

Mr. Mandel testified to that and Government's 1034 refers to that. Indeed, the company was contemplating setting up a resale office as Government Exhibit 1034 reflects.

Carity was also involved in the decision to make Corrales Heights the primary exchange areas and encourage people to exahcnge to that area and he was the one that told the directors that unit 11 should be made as bad as possible to exchange people into Corrales Heights. He knew of the misrepresentation of the land. He knew the land was sold as a good secure financial investment, an investment that can only increase in value, an investment that was better than the stock market and mutual savings bank accounts. He knew there was no resale market for that land, a fact clearly contrary to the fact that it was a good financial investment.

He filed the SEC statements that stated and that were sent from Rio Rancho to the customers that it was premature for a local market to develop. Yet Rio Rancho continued to be touted as a good financial investment. Whatever chance there was a resale market would develop if one every would was certainly put off for a number of years when AMREP added 30,000 acres for sale to the public. The possibility of a resale market to develop was quite remote because AMREP expected only 5 per cent to move there. I think Ms. Hynes dealt with that in her presentation.

Carity, of course, was also aware of the major misrepresentation regarding the direction of Albuquerque's growth and the effect that would have on Rio Rancho. Ms. Hynes has previously described what those representations were and what the true facts were and Mr. Carity was aware of the Harman, O'Donnell report and was one of the recipients of the memo at which that report was discussed.

I would point out that AMREP in 1962, submitted Government's Exhibit 400-B, which I would just like to read to your Honor, in connection with the company's true belief about the effect Albuquerque would have on Rio Rancho Estates, 400-B, an SEC filing in 1962, which Carity signed and on page 14 the company says: "The company does not of course know what growth if any Albuquerque will experience in the future or if any such growth will benefit the company."

That of course wasn't told to potential customers of Rio Rancho. As late as 1973, the company recognized that Albuquerque had no significant effect on Rio Rancho Estates. Government's Exhibit 657, which will be read to the jury on Monday, shows the company's recognition that Rio Rancho's distance from Albuquerque was a negative factor along with the fact that Rio Rancho homes are more expensive than Albuquerque.

Lastly, the government showed Carity and AMREP had no reason to develop the estate. I would like to read from Government's Exhibit 498 which I think accurately sets forth Mr. Carity's intentions with respect to fully developing the property. Government's Exhibit 498 is the memo from Hugh Hood to Chester Carity on July 6, 1971 and it includes the statement in the memo, "The commitments that the company has toward Rio Rancho Estates," and Chester Carity has written in comment, "Why," he said, "Ye gods, no, never use that word, all they wan- to do is pin us down," and he circles the word "intentions," and his response was, "Can't submit anything."

The government submits that was Carity's full intention in developing Rio Rancho Estates, they couldn't be committed to anything, and all they planned on doing is developing the company-owned building areas.

With respect to Dan Friedman, he started in 1963 as an assistant controller and became vice president of sales in 1971 and as such he was the individual directly in charge of and responsible for the daily operation of the national sales efforts of Rio Rancho land. He is also director of AMREP since 1972 and signed SEC filing showing his knowledge of how AMREP did business.

As with Carity, there is overwhelming evidence connecting Dan Friedman with a scheme to defraud. Friedman was involved in the recruiting and hiring of new brokers who ran the sales offices around the country. He worked on the Rio Rancho sales manual and reviewed it with brokers and managers as Zaknich testified to; Friedman went to sales dinners and periodically received tapes from dinners from the different sales offices and therefore clearly knew exactly how Rio Rancho land was sold to the public.

He received periodic reports on sales from the different sales offices and evaluated performances from those offices. Mr. Friedman received the AMREP procedure manual and literature book and worked on the many forms used in the Rio Rancho sales offices and included them in the Rio Rancho literature. He attended sales meetings for the regional directors in which all aspects for Rio Rancho was discussed.

He knew Rio Rancho land was discussed oversaes and was aware of the rider which informed overseas customers who were buying land at the price of more than $30,000, that Rio Rancho land was not easily resellable and constituted an illiquid investment, something not told to the customers. He was involved in the prices of Rio Rancho land, which convinced customers that it was increasing in value. He knew the parties could only be successful in selling the land if the proper mass psychology was created. A sense of urgency had to exist at the dinner parties in order to induce the customers to buy that night.

Reading from Government's Exhibit 531, memo that Dan Friedman wrote to Mr. Bernard Stolzman, in the Wisconsin office, paragraph 8 states: "I know that a few of your salesmen used maps at the closing tables. I do not recommend this procedure as our previous results indicate we are not therefore able to create the urgency that is necessary for the sale."

The government submits that if Rio Rancho were really a good investment, good and safe investment that the company claimed it was, why was it necessary to use mass psychology and sense of urgency in order to get people to buy it?

The government submits that knowledge of the fact that this sense of urgency, this mass psychology attitude was necessary in order to sell the land is sufficient to show that the defendant who knew that also knew that Rio Rancho land cannot be the good investment that it was touted to be.

The need for this mass psychology, the need for this feeling of urgency was the reason why the use of holds were used at the dinner presentation, the reason for the use of the false calls of deletions to make prople believe that the land was going fast and as Mr. Zaknich testified, Mr. Friedman was aware that at least on one occasion he knew those false calls occurred.

Mr. Friedman also knew that the price increases were the most powerful selling tool in creating the sense of urgency.

Exhibit 991, a memo from Dan Friedman announcing a price increase, he says, "There are roughly nine weeks before these new prices take effect, nine weeks to close sales with the most powerful urgency tool there is. There is potent selling ammunition, start using it immediately."

Dan Friedman received reports on the success of the company-sponsored tours, tours which repeated basically the same pitch which the customers originally heard at the dinner and which were very successful in solidifying original sales and selling additional land to customers as investment.

He was well aware seminars were being conducted to standardize procedures on these tours. He was familiar with the other types of sales programs to sell it, OPC, VIP, the hospitality suite, home sit and referrals. He knew the problems regarding a shortage of inventory in the 1960's and the need to sell additional land to the public, which was involved in selling the additional acreage. He was aware of the exchange which was followed by AMREP's policy to exchange into Corrales Heights area which cost people additional money.

He knew there was no resale market for Rio Rancho land. Mr. Fleming has said there was no proof that Dan Friedman knew there was no resale market and Mr. Fleming says there is no proof because the multiple listing evidence and the auction evidence has not been connected to Mr. Friedman. Mr. Fleming conveniently ignores the form letters that are sent to Rio Rancho land owners by Rio Rancho telling them there is no resale market. I would just like to read one example, your Honor --

THE COURT: You don't have to.

MR. KAUFMAN: These are form letters which were sent out by the scores to customers telling them there was no resale market. Morevoer, the SEC filings of AMREP of which Dan Firedman was a director and officer clearly state there was no resale market. The fact that there was no resale market made a purchaser of Rio Rancho land a terrible investment, certainly not comparable to much less, better than an investment in the stock market, mutual fund or savings accounts.

Friedman knew this situation of no resale market will prevail for quite sometime given the company's acquisition of an additional 37,000 acres. Friedman also knew the company had no intention to fully develop the entire property and therefore Rio Rancho could not be justified as a good investment on that basis. As we have previously been shown, there were not enough building lots to accommodate more than a fraction of the land owners and the land in the building areas that presumably were being reserved were in fact sold to the public. That's shown in Government's Exhibit 931.

Friedman knew that people buying commercial, multi-dwelling and ranchettes had no exahnge privileges and therefore those purchasers were totally dependent on development reaching their land in order for it to have any value at all.

Yet, as Friedman knew, no more than 350 to 400 homes per year were being projected for Rio Rancho Estates. That's reflected in Government's Exhibit 963, which meant that it would take almost 200 years for Rio Rancho to fully develop.

Mr. Fleming or no defense counsel has mentioned commercial property. Yet that example clearly exemplifies the fraud because there was no exchange --

THE COURT: Didn't they knew when the purchased it?

MR. KAUFMAN: That's not the proof, your Honor. Even if they did, they were told the property was being developed rapidly and the development would reach their land --

THE COURT: I am talking about the lack of exchange privilege.

MR. KAUFMAN: The testimony has been mixed, your Honor. Some were like Mr. Friend who didn't realize it and some testified they did realize it. A number of the people who had purchased had purchased residential and all people who --

THE COURT: The contract did.

MR. KAUFMAN: That's different, your Honor. People testified --

THE COURT: You mean like the master in science degree from City College, he never read his contract?

MR. KAUFMAN: In any event, these people were told development was going to reach their land soon and I don't think by any stretch of the imagination 200 years could constitute soon. That means as Friedman knew it was going to take well into the next century before people who owned commercial land and ranchettes and multi-dwelling lots had a chance to see their properties worth anything.

As the figures work out, it's going to take 60, 70, 80 years before they develop the company's building lots. That means utilities would be only in company-owned building lots for the next 60, 70, 80 years.

With respect to Solomon Friend, he became counsel to AMREP in '69 and became vice president in February, 1970. He became a director of AMREP in 1971. He was also an officer of Rio Rancho, ATC, and officer of Double R Realty. He was familiar with all aspects of the business.

As a director of AMREP he signed an SEC filing in September, 1971, Government Exhibit 409-A, which reported on the scope of AMREP's Rio Rancho sales activities, specifically that sales were effected through representatives in 19 states at that time and overseas.

On the method of sales, specifically the giving of dinners at which the sales presentations made and all materials used are provided at AMREP and all the reasons people have for buying Rio Rancho, which was stated as profit, and home sites.

The testimony of Larry Perlmutter showed the extent of Friend's activities in and knowledge of AMREP's

Rio Rancho business. Perlmutter testified Friend was sent a copy of the procedure manual, the script for the follow-up telephone call and containing the statement that most people bought it as an investment and follow-up letters referring to the customer's purchases that it is the most important investment ever made.

Friend also received the literature book containing the literature by AMREP. He attended on occasion area representatives meetings. Friend testified he was involved in dealings overseas, and Government's 357 shows it was used for overseas land. He said it was not resellable and is an illiquid investment.

Friend, who was involved in the preparation of that rider only used overseas, shows the land was not resellable or liquid. Perlmutter testified Friend had corporate responsibilities other than general counsel.

THE COURT: All real estate is looked upon as illiquid, same as something else.

(Continued on next page.)

MR. KAUFMAN: Perlmutter testified that Friend was in charge of development and construction. Friend's trips showed him to be actively involved with the construction and development of Rio Rancho and his additional role in the land acquisitions increased the size of Rio Rancho Estates from 55,000 to 92,000 acres.

Moreover, the minutes of the board of directors' meeting show Friend's knowledge of the matters discussed at such meetings, such as construction projections, sales projections, financial projections and personnel decisions.

Friend's involvement in the additional land acquisitions bind him up in this scheme.

Friend knew how Rio Rancho land was sold to the public at dinner parties and he knew how it was sold from reviewing Peter Miller's ATC party script. He knew it from all the promotional literature used at the dinners, including most specifically pages 8 and 9 of "This Is My Land," from reviewing the script for "Your Golden Future," and the actual films and viewing the films used at the parties.

Friend knew that Rio Rancho land was sold primarily as being a good, safe and secure financial investment, better than the stock market and mutual funds or savings bank accounts.

Friend also knew there was no resale market for Rio Rancho land and that there would not be one as long as AMREP was still selling land at Rio Rancho.

Friend, however, participated in the acquisition of the additional 37,000 acres of land in 1970 and 1971 to be sold to the public, thus assuring that all the people who had already purchased Rio Rancho land as a good, safe and secure investment would not be able to resell their land for years and years into the future.

Friend knew that Albuquerque's growth didn't have much of an effect on the value of Rio Rancho's acquired land. As he stated in the grand jury, the price that was paid for the land in 1970 was $180 an acre and the price that AMREP originally paid for the land in 1961 was $168 an acre. This was the same land which Friend knew was being sold to the public for thousands of dollars.

Friend also knew that one of the main reasons given prospective customers why Rio Rancho was a good investment was that Albuquerque was bursting at the seams and could only grow through and to Rio Rancho.

The government submits that with the changes made in "This Is My Land," the growth in Albuquerque and the direction of its growth were still the primary causative reason given as why Rio Rancho land had to increase in value and therefore was a good investment.

Government Exhibit 389 is the last version of "This Is My Land." It still contains that same map in between pages 8 and 9 showing the natural barriers, Albuquerque and the arrow, right up to Rio Rancho Estates. That hasn't changed at all.

That is the same map that appears in Government Exhibit 388 and indeed in 384, which is even the earlier version.

Friend can't seriously contend that the changes in "This Is My Land" removed investment as an inducement in the Rio Rancho sales pitch. Indeed, one of the customers, Mr. Finnerty, who purchased in 1974, testified that he bought in part for investment based on the representations that Albuquerque could only grow to and through Rio Rancho Estates.

For purposes of this motion, certainly reasonable men could conclude that there were no meaningful changes between 388 and 389.

If I may just compare one of the changes that were made, your Honor, 388 states as follows:

"According to experts," and then in italics, "Albuquerque's future growth pattern is predetermined. It and then again in italics, "must take place toward the northwest."

Exhibit 389 says:

"According to experts," then in italics, "Albuquerque's future growth pattern is largely predetermined. Expansion is destined to take place in the general direction of Rio Rancho Estates."

As we have stated, there are still examples of land transactions in 389, some of the same land transactions that appear in 388, without any new ones.

Example A refers to the Buena Ventura addition which, as Mr. Carruthers testified, was a high density area for apartments. Example C refers to Quaker Heights, which is the same misrepresentation with respect to the location of Quaker Heights and Rio Rancho Estates -- a few blocks versus five and a quarter miles.

Example E refers to fronting Central Avenue near Four Hills Road. Mr. Carruthers testified that is commercial property. Example F, Airport Road between Central and Airport, involving five acres, Mr. Carruthers testified is industrial.

So, the land transactions that were contained in 389 lack the comparability that they lack in 388.

THE COURT: Well, if they were selling commercial property wouldn't it be comparable?

MR. KAUFMAN: They did not sell commercial at the dinners, your Honor. That was residential.

THE COURT: And this is only used at dinners? People who bought commercial property never saw this?

MR. KAUFMAN: I don't believe there has been such testimony. Commercial property, I think it was testified, was mainly purchased at Rio Rancho on the tours.

THE COURT: Go ahead.

MR. KAUFMAN: Mr. Weidner observes that there is no proof that Friend knew that the company's claims regarding the growth of Albuquerque and the effect it would have on Rio Rancho was inaccurate. If that is true, the question then clearly presents itself as why did Mr. Friend make the changes that were made in "This Is My Land." There is no reason to make those changes unless there was some knowledge that what was being said in 388 was inaccurate.

THE COURT: It could be a cautious lawyer.

MR. KAUFMAN: It could be, but the government submits it is a proper argument to make that it reflects some knowledge on the part of the person making the changes and the government submits that the changes that were made were basically cosmetic; did nothing to change the overall impact especially when viewed in connection and in conjunction with the overall sales effort and the overall presentation that was made at the dinner parties.

Friend specifically knew that Albuquerque's growth did not necessarily have to have any effect on Rio Rancho Estates. Even on the west side, Friend was aware of plenty of available developable land closer to Albuquerque which could accommodate a substantial number of people; he testified in the grand jury he was aware of Volcano Cliffs, the Bellamah property, which was the Taylor Ranch, and aware of Paradise Hills.

The government submits that because of Friend's frequent trips to Albuquerque, it is also proper to infer that in view of the other developments on the west side that were closer to Albuquerque, such as West Gate Heights and College Heights developments that appear in the uncut version of "West Side Story," it is also proper to infer from his frequent trips to Albuquerque that Friend knew of the great development activity that was taking place in all of Albuquerque, most notably the northeast section.

Accordingly, he knew that AMREP's representation of the effects were false and misleading, that changes in "This Is My Land" and in "Your Golden Future" did nothing to change the basic misrepresentations, especially since the sales presentation at the dinners did not change in its reference to Rio Rancho as a good investment mainly because of Albuquerque's growth.

Friend's involvement in construction and development at Rio Rancho Estates also provided him with knowledge of the falsity of AMREP's claim regarding an investment.

Friend testified in the grand jury that as of 1975, Rio Rancho was only five percent developed and that it had taken 14 years for even that much to have happened.

Friend admitted that it would be long after his lifetime that Rio Rancho would be fully developed; instead, that it would be well into the 22d Century. Such knowledge is directly contrary to the impression created at the dinners and on the tours. The impression was that the development was taking place rapidly and the development would be getting to each individual's landholding.

If purchasers had known that the development would not occur in their lifetime or in centuries, the prospects would have certainly diminished and the customers could have made a decision whether or not to buy based upon accurate representations and not on distortions.

This is demonstrated by Friend's admission in the grand jury that he considered a long term investment to be 10 or 15 years. Of course, we are, the facts have shown, talking in terms of hundreds of years here, not 10 or

15 years, before this property is going to be developed.

The importance of this deception and Friend's knowledge of it is most vividly represented, as I mentioned before, by people who had purchased commercial and multi-dwelling and ranchettes; who had no exchange privileges. As I stated before, the value of their land was totally dependent upon development reaching their location.

As Friend knew and admitted in the grand jury, it was going to take eighty years just to develop the company-owned building areas with no utilities being extended anywhere else. Indeed, the rate of development was fairly indicated by Friend when in the grand jury he stated there were only two homes in Unit 7.

Lastly, Friend's knowledge that there was no resale market which he admitted a number of times in the grand jury is some of the most telling proof that he knew that Rio Rancho land was a terrible investment. Without a possibility of resale, how could an investor do better than the stock market, mutual funds or savings accounts.

In short, the government submits that Mr. Friend knew that Rio Rancho land was being sold as a good investment; that the changes that he made did nothing to change the fact that Rio Rancho land was sold as a good investment and that Mr. Friend knew that, indeed, it was not a good investment.

At this time, I'll --

THE COURT: We'll have a short recess. You will have 15 minutes, Mr. Devorkin, when I come back.

(Recess.)

THE COURT: All right, Mr. Devorkin.

MR. DEVORKIN: Your Honor, I will address myself first to Mr. Oberman and then Mr. Blum and general principles of law which I think apply in this case.

Mr. Oberman, as we all know, started off as the president and director of AMREP and Rio Rancho. He was a major shareholder right from the beginning; he was the fourth largest shareholder. His initial holdings were in the neighborhood of 10-15 percent and he has continued to be a major shareholder throughout the period of the scheme to defraud.

With the other defendants in the case, he controls more than -- with them, that is, he controls more than fifty percent of the corporate stock outstanding.

Even in 1971 through 1975 he is the fifth larges shareholder of AMREP Corporation.

As president, initially, in 1961, he is the chief operating officer of this company and in 1962 he remai as a director. At that point, he leaves his official posit in the company. However, while he is in an official positio with the company in 1961 as agent for the company, he enters into a contract for the purchase of 55,000 acres of property for $168 an acre. At the time that he is president and director of AMREP, the company filed with the State of New York Government Exhibit 455, a statement saying that the company is promoting sales of these lots at Rio Rancho Estates as an investment by means of radio, newspaper and canvassing.

As Your Honor is aware, similar statements were filed with the State of New York by the company as late as 1972 and 1973.

In 1962, while Oberman is a director and we submit responsible for the management of the affairs of the corporation, AMREP files with the SEC Government Exhibit 400-B, a statement which indicates Oberman's knowledge of certain general principles applicable to this land and this company:

First, that the land being sold is raw land, undeveloped land; that the only way the company intends to improve it is by putting in roads and that the roads will be unpaved roads, dirt roads;

Two, that the company intended to use the same sales methods as were employed in selling the Rainbow Lakes Estates property plus using local brokers to sell Rio Rancho Estates:

Three, that the company's basis, the basis for the company's interest in this entire property and promoting the sale of this entire property is the population growth of Albuquerque.

The statement goes on to state that the company is aware of numerous homes between Rio Rancho and Albuquerque and is aware of other developments in the general area south of Rio Rancho Estates.

However, further it admits that the company does not know -- this is when Mr. Oberman is a director of AMREP -- the company does not know what growth, if any, Albuquerque will experience in the future or if that growth, if any, will benefit the company.

Now, in 1965 Mr. Oberman essentially takes charge on behalf of the company in seeking the advice of Harmon, O'Donnell & Henniger as to the potential of Rio Rancho and the influence of the Albuquerque growth on Rio Rancho Estates.

There are a series of exhibits -- Government Exhibits 976, 984, 983 and 983(a) -- which talk about preliminary meetings with Herman Oberman, Katzenberg and Mr. Walsh. Mr. Oberman brings Mr. Carity into the picture to discuss going ahead with Harmon, O'Donnell. The work of Harmon, O'Donnell is going to be geared to the schedule of Mr. Oberman. It is essential that Harmon, O'Donnell meet with Mr. Oberman. He is the crucial person they have to meet. Clearly, he is out front on this one. He is handling this matter for the company.

Again, he is still a major shareholder and still obviously working actively on the company's behalf.

He finally, after the initial discussions, gets underway, gets a preliminary report, Government Exhibit 978, from Harmon, O'Donnell in November, and in December he meets with Avellanet, Katzenberg, Sommerholder and Walsh. That preliminary report, before they get the final version, tells Herman Oberman that Albuquerque's population expansion even to the 600,000 level will have only a minor impact on land shortages in the Albuquerque area; that the Albuquerque area is growing to the northeast and to some extent to the southeast and that this trend to the east, northeast, will continue, and that there will be very little development on the west side, despite the bridge crossings and, again, it talks about the patterns of growth to the east and northeast as the dominant patterns, the dominant preferences of the people who live in the Albuquerque.

It mentions the 1985 land-use plan, tells Herman Oberman in essence there is a 1985 land-use plan; the City of Albuquerque planning department has done a major planning study in this area.

As your Honor commented in one of the pretrial hearings, if you are going to sell thousa[illegible] of acres of land in an area like this and Oberman knows they are being sold for investment, one of the first places you go to find something out that pertains to that land and that is accurate, and to find out about the area, is the planning department in the area and we already --

THE COURT: At this time Oberman is no longer an officer and a director, is he?

T-6

(Continued on next page.)

MR. DEVORKIN: No, but he is clearly working hard on the company's behalf and that was in addition to Mr. Oberman knowing about it through Mr. Avellanet's report, we later find is in the company's reports. Avellanet meets with Oberman and they discuss this report in detail. They discuss the preliminary report in detail. Oberman's knowledge and reaction are illuminating. He tells Avellanet what the operating assumption of the company is, that no more than 5 per cent of these people based on our experience are going to move out there.

So, Oberman is aware of the likelihood that it is ever going to be developed. He tells Avellanet not to worry about the plans not to develop the property, because of the 5 per cent, and we sell dreams. He tells Oberman what national sales rates are, they may have to sell more property or sell it faster, which lots are sold first, he tells him about the new sales effort involving dinners. It indicates clearly Oberman isn't just passing in the scene. He tells Avellanet about certain aspects of the sales operation.

The final Henninger report comes in, Government's Exhibits 974 and 985, show Oberman has read it, he is intimately familiar with it, it repeats the preliminary statements and goes into two aspects: both the Rio Rancho sales effort as reflected by the kind of things Oberman has told Avellanet and the effect of Albuquerque on Rio Rancho. It says 98 per cent of the purchasers are from out of state, sales are on the installment basis, they sell the worse land first and only 5 per cent of the buyers will ever settle on the property.

Then he tells Oberman and the others, Albuquerque will have little effect for 20 years. All the preferences for moving to other parts of the city, the predominant trends in the other parts of the city and it again mentions 1985 and the limited success on the west side. It says home and land values in the northeast are stronger than they are on the west side.

In light of this information, if Oberman didn't already know it and we submit he didn't, on the basis of the kind of things he was telling Avellanet, and his obvious familiarity with the area he now knows Rio Rancho's main sales theme which is based on investment value in Albuquerque's growth is false and misleading.

It is also clear as I have said that he doesn't expect Rio Rancho to have to develop the entire property because of the 5 per cent figure.

I submit that these memos, the meeting with Avellanet and Walsh shows that Oberman is generally familiar with the happenings in the Albuquerque area. Walsh and Sommerholder are superior, I think you can construct the relationship that way and he is just as familiar with Walsh and Sommerholder, the jury can infer, as they are with the Albuquerque area and he knew the same facts as they did.

They told Avellanet the growth was in the other direction, there wasn't a lot of development on the west side. So if they told Avellanet, Oberman even knew that before they even told him that.

If he is familiar with the area, he is familiar with Mr. Pierce's observation on redirect examination, that at the time the statements were being made that it was a reasonable statement to make that the only direction of Albuquerque's growth was to the northwest, the only direction of the urbanized area of Albuquerque was to the northwest or the only direction of the entire urbanizing area was the northwest. That was a false statement.

Mr. Pierce said so and Mr. Oberman should be just as familiar with the facts based on these memos and conversations as anyone else would be. It is clear that he knows Rio Rancho's approach to selling these lots is based upon an investment property position and he clearly knows now that that is a misleading proposition.

He was the president and director when the 455 was filed, stating it was for investment, he knows based on the SEC filing the company's interest is because of Albuquerque's supposed growth --

THE COURT: This was all before 1965. Tell me what he did after 1965.

MR. DEVORKIN: It is obviously fair to infer he received 218-I; the report to the shareholders again saying what the basis for the company's interest in the property was, including the notion that Albuquerque is pinned in on three sides. It does talk about that and Rio Rancho is the obvious excape hatch for Albuquerque.

I don't think it's any coincidence the major brochures during that time emphasized this critical point. For example, "This is My Land." There is no question Oberman knows of these brochures.

MR. RUBINO: Excuse me, your Honor, this is such a distortion of the fact --

THE COURT Just relax.

MR. DEVORKIN: Government 604, dated January, 1968, where Oberman is being consulted along with Hoffman, and Carity, among other things the exchange privilege of the contract, the exchange privilege from an even size area to equivalent size area and they change the exchange, and they want Oberman's advice what the new exchange privilege should read because they have got to put it into "This is My Land," in fact and fiction.

The two critical brochures used at the promotional dinners. The memos give this your urgent attention and get back to me because I have got to print these brochures in the next few days.

The facts and fiction, Government's Exhibits 346-D, 379, which on one side of the page has the title "Facts and Fiction," and each of those exhibits has the magic phrase "Albuquerque's future exchange is limited on three sides and therefore Rio Rancho is directly on its side." That's on page 43, and page 13, and Mr. Mandel testifies that was used in 1964 and I submit it shows 379 was used sometime beginning after 1966 because there are some 1966 population figures there which don't appear in the earlier version, 346-D.

In Government's Exhibit 918, it shows that went to Oberman and involved Oberman, and that he is familiar with sales and he is familiar with land inventory at Rio Rancho.

Just by the way, the predecessor to these exhibits, 379 and 346-D, is 146-G, which Mr. Clymer got around 1962. It is copyright in 1961 when Oberman is the chief operating officer of this company. It has all the runner-ups to everything Rio Rancho ever said to customers and it has them in writing, such things as this is an area where land values are constantly doubling, redoubling and redoubling again often in just a few years, and the demonstrable fact that land prices generally in Albuquerque have increased 20, 30, or even 50 times more in the past 20 years and is it any wonder why home site Rio Rancho Estates are very conservatively expected to double and triple in the next few years alone, and it has written out very clearly on the last page the famous leverage principle which we have heard about repeatedly in this case. When Oberman is chief operating officer of the company, that's when this is printed and the other facts and figures which come along later.

On these facts alone Oberman is familiar with sales, with the sales concept, he knows it's investment, he knows about the growth concept and knows they are false and misleading. He knows there is no local market or local interest in this property. The local market and interest is all elsewhere.

He knows there is not likely to be any effect on Rio Rancho from Albuquerque in a long time, if ever, and he knows that based on what he has been told and based on his own personal experience. His awareness is confirmed and I won't repeat it in detail, by Government Exhibit 410, SEC filing in 1968, which 410-A shows Mr. Oberman read, he knows there aren't any material changes that should be made in that statement, and this sets out that the company, how it has been selling land, it has about 25,000 acres of land it can still sell and until '64 they were selling by direct mail and now they have brokers, and they sell principally dinners with a sales presentation, the company provides the presentation, the materials, services to the salesmen who are operating on commissions and it says in there there is no investigation of the buyer's capacity to pay and that combined with the sales methods have led to complaints by purchasers.

He acknowledges that some purchasers are buying this property for profit, for an increase in value in their property, some for home site and some for business purposes, combined with the memos I have just mentioned and I submit that shows Oberman had knowledge there were commercial properties being sold and combined with his knowledge as to when the property was going to be developed there is no way in the world commercial property could be represented as a good investment. He says there is no way the company can assure it will be able to sell its own property to profit in the future and that resale of these lots by our customers is difficult as long as the company is selling.

Then the coup de grace. Oberman goes out and acts to negotiate to buy another 30,000 acres of land for the company when customers have difficulty selling. Government 604 shows as early as 1968 there are discussions about acquiring the King property. Then on the eve of his retirement Oberman negotiates for 30,000 more acres at $180.

THE COURT: You should be able to present your version on this motion in 15 minutes.

MR. DEVORKIN: Let me conclude on Oberman. Addressing Mr. Rubino's point about withdrawal, it is an important point and we have covered it to some extent in our original pretrial motions brief but there are a couple of points I think have to be highlighted.

Mr. Rubino suggests that the cases state that if you are not around when the scheme is made to defraud, you are out. I don't think the cases state that or hold that or a fair reading would suggest it for these reasons: it is clear from the cases, particularly the Hyde case in the Supreme Court and Bolillo, that the defendant has an affirmative obligation, burden, to show withdrawal by showing a break, a disavowal of the scheme.

THE COURT: What happens if the government does it for him?

MR. DEVORKIN: The cases don't state retirement is enough. I want to cover the mail counts because as Mr. Rubino presented it, it's a difficult issue. The Van Riper case which he relies on almost exclusively, is decided before the Pinkerton case. It is a Second Circuit case, decided before the Supreme Court and Pinkerton says that a scheme to defraud with more than one person is a conspiracy and that every defendant in a conspiracy is fully responsible for all substantive acts that happen after he has left the conspiracy, if they were contemplated by the conspiracy and in furtherance of the conspiracy unless he shows an affirmative withdrawal from that conspiracy.

Judge Hand wrote the Van Riper case but also wrote U.S. versus Cohen, 145 F.2d 82, 23 years later in which the very same facts Mr. Rubino is arguing for here, namely, you are out if you are not around when the count mailings go out, was rejected by Judge Hand in that case. He held that the mailings apply to a defendant because they were part of a continuous scheme, not discreet little acts, but a continuous scheme set in motion when he was part of the venture.

And the Eighth Circuit in U.S. versus Cohen, which we cite in the original papers, has held that the same principals that apply to withdrawal from conspiracy apply to withdrawal from scheme to defraud and that you can be held for count mailings after you have left a scheme to defraud if it is part of a scheme to defraud.

The Reisman case is squarely on point with the facts here and Mr. Rubino knows retirement argument was rejected in that case as in Cohen. Reisman said, "Although appellant Reisman resigned as president and director of the Gamble Land Company and ceased to participate in the company's day-to-day business operations, he remained a major stockholder and took no affirmative action to disavow or defeat the promotional activities which he had joined in setting in motion, we think more was required to terminate his liability with the continuing conduct of his confederates."

The crime is a continuing one and keeps going and he is in it unless there is disavowal. In the Cohen case the defendant had moved to some other state and he left the company, set up a new --

hpjb

THE COURT: You have five more minutes. The argument of the government started at five to eleven and went to twenty after twelve. It is now five minutes to one.

MR. DEVORKIN: I realize the hour is late.

THE COURT: It is the length of time to present the government's argument, well over an hour and a half. You haven't reached Blum yet.

MR. DEVORKIN: As to Blum, he is president, director, chief operating officer of the company for six years, chairman of the board for eight years thereafter. The offering statements in '69 state that he devotes substantially all of his time to the affairs of the company. He is not a mere figure or not somebody who holds a title. He is a functioning person. The offering statements say so. He is the third largest stockholder throughout this period of time. He is in a position to control and know everything the corporation does.

I submit that he knows about its sales inducement, marketing structure and the thrust of the sales theme based upon his position and in the statements he is filing with the SEC. And his presence at least at the board meetings that your Honor has permitted us to use in this case.

He files with the State of New York, Government's 455, the promoting is an investment, and he talks about the raw land, unpaved roads being put in, the sales methods and brokers are going to be used. He doesn't know what growth if any Albuquerque will experience in the future and yet he clearly knows the thrust because he sent out the annual shareholders report stating what the company's interest is, Albuquerque pinned in on three sides and the company's growth and so forth.

He knows because of SEC statements filed in '68, '70, '71, '72, about the brokers, dinner presentations, and he knows purchasers are buying with the motivation to get a profit by increased value and he knows there is no resale value. He knows it can't be a good investment because he knows that there isn't any resale market. He knows that from the SEC statements that Albuquerque will have very little impact on Rio Rancho. He knows the amount of acreage, he knows the company has increased the acreage by 37,000 and at the same time it's previous customers over the last six or seven years are having difficulty reselling their property and they are buying it for investment.

He is the chairman of the board of Rio Rancho and Rio Rancho is a member of the Multiple Listing Service, so he should know there isn't any local market in Albuquerque for this property.

I just want to say a couple of words, your Honor, about the law that applies to Mr. Blum. We have cited almost all of it in our papers but there are a couple of points important to emphasize. The cases recognize two things: that Mr. Blum's actual knowledge can be shown circumstantially by the nature of his own statements and his position --

THE COURT: What case do you rely on?

MR. DEVORKIN: The Van Riper case for example, your Honor.

THE COURT: You cited Bernstein, which is not on point and --

MR. DEVORKIN: Two points, your Honor --

THE COURT: The Benjamin case deals with an auditor who is an employee of the company, an independent contractor and not an officer and director, so that doesn't apply. U.S. against Squires is not a corporation case.

MR. DEVORKIN: Your Honor, can I respond on those cases?

THE COURT: No.

MR. DEVORKIN: This is very important obviously --

THE COURT: I have read the cases and I know what they say and I know your argument. I'm saying the cases do not support your argument.

Andreadis is a case where there is a sole stockholder who does everything in the business. He is the man to whom they come and tell him what he is doing is wrong, and the New York Medical Society tells him what he is doing is wrong. Of course he knows.

In the Bernstein case she was the one who did the dirty work.

MR. DEVORKIN: Putting those kind of cases aside, your Honor --

THE COURT: Those are the main cases you cited.

MR. DEVORKIN: There are two approaches holding Blum in the case. One that he had actual knowledge or, two, and this is a standard in all fraud cases whether or not a securities or mail fraud, where he had reckless disregard for the truth or falsity of the statements being made.

(Continued on next page.)

THE COURT: Oh, no. Reckless disregard for the truth is involved in all cases?

MR. DEVORKIN: In fraud cases it is, your Honor.

THE COURT: Go ahead.

MR. DEVORKIN: Whether it is a securities or a mail fraud.

On the actual knowledge, I rely on Van Riper, where Judge Hand talks about --

THE COURT: Don't tell me, please. When you argue, please don't tell me. I have read the cases. I am as prepared on this issue as you are.

You tell me why I should disregard what I indicated as my result because the cases you cite don't sustain your proposition. You keep throwing Andreadis at me in practically every document I get from you and it is not in point.

MR. DEVORKIN: I am putting those kinds of things aside -- Andreadis and Bernstein. I am talking about the cases that say you can infer knowledge, actually infer actual knowledge on a man such as Blum's part --

THE COURT: Well, now you have given me the fact upon which you say I should infer knowledge.

What else about Blum?

MR. DEVORKIN: Just on that theory, I refer your Honor to the Mortimer case --

THE COURT: Don't refer me to cases. I have had your briefs. I assume everything is in your briefs and they have been read.

MR. DEVORKIN: I submit that those cases say that when a man is an officer and director of a company he is familiar with the general practices of the company; he is familiar with the details that I have set out for your Honor this morning, that the jury may infer that he has the actual knowledge of the falsity demonstrated and I have shown that he does have actual knowledge of one falsity, namely, that it is not a good investment because you can't resell the property.

In addition to that, your Honor, the other line of cases, particularly on the interstate land sales counts, hold that a man cannot deliberately close his eyes to facts which he has a duty to see and that he can't act with reckless disregard of the truth or falsity of his statements or --

THE COURT: When did the Interstate Sales Act take effect?

MR. DEVORKIN: In 1969, your Honor.

THE COURT: Wasn't Blum out of the company by that time?

MR. DEVORKIN: He was chairman of the board right up to today.

This is not Oberman but Blum, your Honor. He is the chairman of the board, on the executive committe continually throughout the entire period.

THE COURT: Go ahead.

MR. DEVORKIN: Your Honor, the point about the interstate land sales act is that it is copied from the securities act scheme --

THE COURT: But not the regulations.

MR. DEVORKIN: No. I agree with that.

THE COURT: Come on; get down to the point. It's five after one and you are still going.

MR. DEVORKIN: Your Honor, as the court in Shanker, 529 F.2d 96 -- and that case is not in the papers, your Honor -- which was in the Ninth Circuit and has recently held not only does the interstate land sales act track the securities act scheme, it tracks its purposes, including the purpose of imposing a duty on those that sell land interstate and it is a duty to the public and, as your Honor knows from the cases we have cited, in the securities field the government is entitled to a charge to the jury and therefore we can talk about inferring it here -- that a man selling stock to the public, here a man selling land to the public, has a duty to inquire affirmatively about the truth or falsity of the statements that he is making or his company is making to the public and Mr. Blum has that duty, as does every other defendant in this case, and that duty, I submit, the Bernstein case and the Natale case mean that in considering whether or not a defendant recklessly disregarded truth or falsity of statements, irrespective of actual knowledge, you have to take into account the duty he had to make inquiries and the government would be entitled, under the interstate land sales act, to have a charge on duty as a matter of law and a jury could infer from Mr. Blum's duty and from all the other facts that he knew, particularly about the absence of resale and so forth, that if he didn't have actual knowledge, he can be convicted of the fraud because, given his duty, he recklessly disregarded the truth of or the falsity of the statements that were being made or he made or authorized statements to be made about facts of which he was ignorant and the cases that I did cite, Bernstein and so forth, do stand for that proposition in a mail fraud or a securities fraud case.

Bentel is a case involving a mail fraud long before the Securities Act.

On that basis, I think the cases we have cited do apply to the facts in this case and Mr. Blum should be held in both the mail fraud, because of the facts that I went over this morning, and on the interstate land sales act, because he has that duty and, besides his knowledge of the absence of resale, if he didn't know the other facts, he recklessly disregarded the truth and falsity of the sales representations the company was making and he was under a duty and the jury can infer that from those facts and the law.

MS HYNES: Your Honor, I have an application.

Mrs. Thompson indicated that there were 3 or 4 items left open. IN fact, Mrs. Thompson read a list of 13 items on page 8 from her brief which she is moving to strike.

The government does have proof in the record and we would like to state for the record what the proof is in addition to the 3 or 4 items.

THE COURT: You are not arguing about 76, 77, 78, 79 and 80, are you?

MS HYNES: No. ON page 8, paragraph 16b, 17c, 17f, she has listed 13 paragraphs or subparagraphs in the indictment that she wants struck.

THE COURT: Go ahead.

MS HYNES: With respect to paragraph 16v, that paragraph states in part that the defendants had no intention --

THE COURT: YAu don't have to read it to me. I have it in front of me. Give me the argument.

MS. HYNES: The argument is that the Avellanet testimony relates to that; that the defendants did not have an intention to develop the entire 55,000 acres, much less the 91,000 acres, and I have stated before the argument with respect to the north Albuquerque acres and in respect of the way that they were selling the land, it was indeed preventing or indefinitely postponing its development as a fully masterplanned community.

With respect to paragraph 17c, I would refer the Court to the chart that has been received in evidence with respect to ATC.

With respect to paragraph 17f, we agree that that can be struck from the indictment.

With respect to paragraph 17i, the testimony of Mr. Lederman is directly in point there, where he testified that the purchasers did not in fact have an oppostunity to read contracts; and there has been testimony from other purchasers -- Mr. Jones comes to mind as one example of a purchaser who stated he didn't have an opportunity to read the contract.

Paragraph i goes much to the same point and my references are again to Lederman --

THE COURT: She didn't mention i.

MS HYNES: Your Honor, i is mentioned later on in the brief, which is still open, at other pages -- at page 10.

THE COURT: It is mentioned in relation to some lines of it, not for the entire paragraph.

MS HYNES: Yes, and I am referring to the lines that are referred to on page 10 of the brief, making it virtually impossible for the purchasers defrauded to read and understand the contents of the property reports in offering statements before purchasing land -- that language -- and with respect to that, again we have Lederman's testimony, we have Monaco's testimony and Zaknich's testimony with respect to that, that it would take at least thirty minutes to read each report and we have the testimony of the customers.

With respect to paragraph 17n, I think that there has been testimony on that. Mr. Kaufman has addressed that in his argument to the Court with respect to the changes that were made in "This Is My Land" by Mr. Friend.

Paragraph 17-o, I would refer your Honor to the testimony with respect to the training program and the fact that salesmen and managers were trained and their training program manuals are in evidence on the promotional material and basically sales people were told the very things that they in turn turned around and told to customers so, in fact, sales people were not given the complete information and certainly not the information on growth of Albuquerque.

With respect to paragraph 17-n-vi, your Honor has sustained an objection to a letter which has that language specifically quoted. We are now in the quoted portion of the representations. However, in substance, there has been testimony about the profitability of investment of Rio Rancho and I refer your Honor to your Honor's statement when we went to offer another sales script and your Honor ruled it out as cumulative and I indicated then that I was concerned because there was a quote, a specific quote, from the indictment from that sales script and --

THE COURT: I understand.

MS HYNES: -- and your Honor stated at that time no one is going to say that you didn't prove the exact language and if they do, I will slap them down.

Well, we are faced with that situation and your Honor said that at page 3232 so, while I agree that vi is not specifically as quoted, I think in substance there has been testimony to support that and certainly the quotes could come out but the substance is in.

Paragraph 17-p is the same situation and with respect to this, Mr. Fox, I believe testified, and others testified but at least Mr. Fox comes immediately to mind as an example --

THE COURT: You mean 17-r-i?

MS HYNES: No. I have 17-p.

THE COURT: You have done that, haven't you?

MS HYNES: Sorry. 17-p-xii, bottom of the page, last quote.

The testimony of Mr. Fox was that he didn't believe that he could lose on this, that this was a sure thing. IN substance, the testimony of the customers has been that this was something that they couldn't lose on.

I believe Mr. Gray also testified to that, as did others.

Paragraph 17-q-vi, again this is another situation where there is a specific reference in a letter. However, there is also similar representations made in speakers' presentations which have been received in evidence, 314 to 317, and in promotional pamphlets which talk about the unique location of Rio Rancho, assuring its continued rise based upon population growth and I would also say that the sales film, "Your Golden Future," makes that same point.

Paragraph 17-r-i, here again the Government Exhibit 341 is the script of the "Your Golden Future" prior to Mr. Friend's handwritten changesw, chich admittedly has a date on the script of March of '72, I believe, but that was the script for the "Your Golden Future," at least up until that time and that statement is made there and also made in other promotional pamphlets such as the facts and figures, also known as "How To Live, Retire and Invest."

17-s-vii, with respect to that, your Honor, we have testimony in the record, but let me refer to documents first.

We have a document which is 752z and that is the recruiting and training manual which sets forth the expense involved in putting on this promotional program, having the dinners, paying for the dinners and it is done in the context of recruiting good closers, so you can get the sales, but there is evidence in that document with respect to the promotional costs.

There is also evidence through the cross examination of Mr. Flemming with respect to the sending out jbjb-11

of invitations, the amount of responses, the kinds of costs involved in that.

There are other documents that have been received in evidence that do relate to the cost of solicitation, the cost of sending out these dinner invitations and the cost of leads and there are many, many documents, and I don't have the specific reference now which relate to the cost of the promotional operation here of these sales dinners and their costs -- some of the memos, and my recollection is at least one of them, was by Howard Friedman, analyzing the selling costs of the defendant ATC in connection with the sales operation.

So, there is evidence in the record to support that paragraph particularly in light of the evidence of what in fact the actual cost of the land was.

Paragraph 17-s-viii, here again we have the situation where we have the testimony of Mr. Zaknich about only ten percent was set aside, that there was not enough lots set aside to allow everyone to exchange and also testimony of Mr. Avellanet with respect to his conversations on the basis that the defendants would only develop five percent of the property and, finally, we also have Exhibit 439 which is a filing with the State of New York, which sets forth what the utility company would do with respect to utilities and it states very clearly that the utility company will only put utilities in areas outside of the immediate building areas when there are substantial numbers of homes to justify demand.

The way the company operates, that could not happen, because anyone who wants to build a home comes into the building area and that, together with Government Exhibit 1002, which states that if the purchaser cannot go into the building area, they probably will not be able to obtain utilities. That is a specific statement made in the HUD property report as of May of 1975.

Paragraph 17-s-x, your Honor, again this is the HUD property report, Exhibit 1002, page 8, which specifically says that it is not likely that customers will be able to obtain utilities unless they are in one of these exchange areas. That, together with -- if I can just state for the record what Government Exhibit 439 states with respect to utilities - [illegible] can't put my hand on it but the basic statement in 439 on a rider that relates to utilities does say that the utility companies will not, the utility companies will not put utilities in areas outside of these building areas unless there are a substantial number of homes to justify the demand and then we get back into the Catch 22 situation of demand.

With respect to page 9, paragraph 15 -- that is Mrs. Thompson's brief -- beginning with line 13, that utilities services were miles away -- there we have the testimony of the customers; we also have the contracts which are in evidence which show where the lots were that were purchased. We have a map that would designate where the lots were; we have the mosaics which show where the developed area is. We have Government Exhibit 795 which gives distances from units to the developed area and those distances are in terms of miles and we have, again, Exhibit 439 which says that the utility company will not go outside of the existing building areas with respect to utilities and we have Exhibit 1002, which says that if you are outside of a building area, you are not going to be able to get utilities and, if you do, it would be exorbitantly costly for you to do so.

With respect to paragraph 17-h, persons to be defrauded hav e been enticed to attend sales dinners, I refer your Honor to Exhibit 313 which is one example of the enticement and that is scripts for telephone rooms, used in telephone rooms, and if you read those scripts, there is a real effort to come back and entice people to come to these dinners with the idea this is a free dinner and if you read those scripts, that is going to be the support for that paragraph in the indictment, among others: among the testimony that your Honor has heard here and the invitations that were sent out for the free dinner showing a film.

With respect to paragraph 17-i, this I have already covered, your Honor. I'm sorry.

17-m, beginning at line 4, this relates to the tour and preventing investors from learning adverse information and with respect to this, I refer your Honor to the testimony of Mr. Monaco, Patricia Miller, particularly, and also Mr. Masone. There has been testimony of how the movements of these people were controlled: there was a careful schedule and there is additional testimony that Mr. Geller, who was the manager of ATC, the defendant, gave instructions and both Mr. Masone and Patricia Miller testified that there were instructions by Leonard Geller to buy up all newspapers when there was an adverse article with respect to Rio Rancho Estates.

There was also testimony by both Mrs. Miller, Patricia Miller, and Mr. Masone about the situation when somebody wanted to rent a car -- that they would be discouraged and they had to go to see Mr. Leonard Geller and basically the testimony of people being taken on and off buses and very little free time.

d T-8

Mrs. DeWitt testified that there was just enough time to change her clothes and go and have dinner and certainly this is the basis upon which this paragraph in the indictment has been supported through the testimony in this case.

t9.am

hpjb 1

The last reference on page 11 of the brief is to paragraph 17s,9, and that again would be covered by Government Exhibit 1002, and 439. Those are not the only exhibits that support that. There are other exhibits in evidence but certainly those are examples of exhibits that do support the evidence that has been introduced in this trial on that.

The one last item that was raised by Ms. Thompson in the brief was the fact of the mailing and customers testifying that their payments were sent to Chemical without using the magic word "mailing." Mr. Perlmutter has testified that mailings were made to Chemical Bank. It's a Post Office box at Chemical Bank and he has so testified, that these mailings were made to this Post Office box at the Church Street Station.

There has been testimony and there is an enveloped in evidence that shows it is to Chemical Bank's Post Office box, Church Street Station. So there is evidence in this record by the chief administrative officer of AMREP that the procedure for making payments on contracts is to mail the payment to the Chemical Bank in envelopes that are provided by the company, and that together with the testimony of the customers in the entire circumstance of this case certainly is evidence of mailing to the Church Street Station, Chemical Bank Post Office box which supports the counts in the indictment.

With respect to the counts under the Interstate Land Sales Act where we have not offered documents, I would agree, your Honor, that they are no longer in the case. There is the one outstanding count where Ms. Thompson is going to check as to the advertisement and with respect to that it is still an open question.

But, with respect to the other counts where we have not offered the documentation, I would agree that those counts are no longer in the indictment. I don't have the specific delineation of them right now.

THE COURT: All right, motions by Mr. Fleming for judgment of acquittal on behalf of defendants Carity and Daniel Friedman are denied.

Motions by Mr. Arkin for judgment of acquittal on behalf of defendants Howard Friedman and Henry Hoffman, and Rio Rancho Estates, Inc., are denied.

The motion by Mr. Hoffinger on behalf of Mr. Blum for judgment of acquittal is granted.

Motion by Mr. Rubino on behalf of defendant Oberman for judgment of acquittal is granted.

Motions by Mr. Weidner on behalf of the defendant

Solomon Friend for judgment of acquittal, decision is reserved.

Motion by Mr. Lavinsky for judgment of acquittal on behalf of defendants AMREP and ATC for judgment of acquittal are denied and motions made this morning for specific counts and portions of the indictment, decisions are reserved.

MS. HYNES: Your Honor, I have one further application and that is when we resume and begin the defendants' case on Monday, we would ask the court to direct the defendants to provide us on Friday with a list of the witnesses that they are going to call so we are in a position to have the material available to cross examine them.

THE COURT: To the extent they can, yes, but I gather they are all in Albuquerque right now and will be working there until Friday to determine what they are going to do.

MS. HYNES: We need it the night before. On a weekend, your Honor has ruled --

THE COURT: I understand that but I am pointing out to you, as you well know, that Mr. Arkin, Mr. Fleming, Mr. Sprizzo, I gather Mr. Lauer, Ms. Cross, the defendants Carity and Dan Friedman are in Albuquerque. They left at 7:00 this morning to determine what their procedures are going to be and I gather will be there until Friday.

MS. HYNES: I understand that, your Honor.

THE COURT: To the extent they can, the answer is yes.

MS. HYNES: My request goes to the entire trial --

THE COURT: We'll worry about that on Monday.

(Whereupon, an adjournment was taken to Monday, January 3, 1977.)

A 6220

gtjb

UNITED STATES OF AMERICA

v.

76 Cr. 644

AMREP CORPORATION, et al.

January 3, 1977
9:30 a.m.

tla.am

THE COURT: Somebody has an application?

MS. HYNES: Your Honor, yes.

One thing we have to report to your Honor is that the certification that I spoke of, the certification from HUD with respect to the correspondence and the statement on the property report, has not arrived in the mail as of the time we left for court this morning.

We were advised on last Wednesday that it was being placed in the mail. However, the individuals who advised the government of that have been on annual leave on Thursday, Friday was a federal holiday, so we have been unable to get back in touch with them to assure ourselves that it was, in fact, put in the mail on Wednesday.

In any event, we would still seek to offer that certification.

THE COURT: It will be allowed, unless it is subject to some legal objection.

All right.

MS. HYNES: Next, your Honor, with respect to your Honor's decision with respect to Mr. Oberman, Mr. Blum and Mr. Friend, we would like to inquire of the court as to what your Honor will say to the jury with respect to the absence of those three defendants.

THE COURT: The usual precaution I give every jury when somebody is dismissed at the end of the government's case.

MS. HYNES: Your Honor, I am not familiar with the usual precaution.

THE COURT: You will hear it when I give it to the jury.

MS. HYNES: Your Honor, we would also ask that with respect to the three defendants who are no longer in the case that they be excluded from the courtroom.

THE COURT: I don't see any of them here.

MS. HYNES: I don't see any of them here, your Honor, today, but the trial will be continuing.

MR. ARKIN: We have not invited them, your Honor.

THE COURT: If they want to come and sit in the spectators' seats, I can't stop them from doing that.

MS. HYNES: Your Honor, we request with respect to any witness that the defendants expect to call that they be excluded from the courtroom during the course of the testimony.

THE COURT: That application is granted.

MS. HYNES: Finally, or there are several other items, your Honor.

With respect to the list of experts that have been provided to the government, the defendants, Mr. Arkin said in his opening, that he would call appraisers, and we have appraisers on the expert list of witnesses.

As recently as yesterday afternoon, we again requested Mr. Arkin for any reports of these appraisers and were advised that there are no reports.

Mr. Arkin also has on his expert list a Mr. Marcou. Mr. Arkin stated several weeks ago to your Honor that there was a preliminary report that was in the process of being completed by Mr. Marcou. Again, we have not received this.

I don't know whether Mr. Arkin has received it.

But, in any event, with respect to any of the experts that have been placed on the witness list and are supposed to be called on the defendants' case, the government has received no discovery in respect of any reports that have been submitted to the defendants.

We would ask to have reports that have been prepared turned over to the government.

With respect to Mr. Marcou, Mr. Kaufman has another application to make with respect to that subject, your Honor.

MR. KAUFMAN: Your Honor, on the defendants' list of experts, George Marcou is listed.

A few weeks ago, Mr. Lavinsky introduced a Mr. Fawcett to your Honor. Mr. Fawcett works in Mr. Marcou's firm. Mr. Lavinsky stated that Mr. Fawcett may be a defense expert witness, though his name does not appear on the expert list.

Number one, we would inquire as to whether the expert that they are going to call is going to be Mr. Marcou or Mr. Fawcett. I think we are entitled to know who the actual witness is going to be.

Secondly, under the assumption that Mr. Marcou is going to be their expert witness, since it is his name that appears on the list, I contacted Mr. Marcou last week, I finally was able to reach him Thursday morning, at which time I tried to schedule an interview to see Mr. Marcou at his convenience.

His answer to me Thursday morning was that he was at home -- that's where I called him -- and he didn't have his diary or his calendar with him and he would have to check his calendar and get back to me.

He eventually did get back to me at about 5:00 Thursday afternoon and told me that he would not see me, that it would serve no useful purpose, to quote him.

I asked him if he had consulted with defense counsel during the interim between the time I had spoken to him in the morning and at 5:00. He said he had.

Obviously he was -- he was changing his ground as far as whether or not he would see me. He originally had indicated he would and it just depended on his calendar, then after consultation with defense counsel, he was saying that it would serve no useful purpose.

All the government's witnesses, the quasi-experts, like Mr. Avellanet, were made available to the defendant for their interviewing and we believe the same courtesy should be shown the government.

THE COURT: Mr. Arkin?

MR. ARKIN: First, with respect to Ms. Hynes' statements about reports in respect to the appraisers who are on our list, we have no reports from any appraisers. But I did advise the prosecution or their representatives that the appraiser or appraisers or appraiser is generating certain material which he is going to use in the preparation of his testimony, but not reports.

I went so far as to tell the prosecution when we bring that witness in, with respect to those documents upon which the expert, the appraiser, would rely on his testimony, I would make those available to the prosecution, even though they are not reports. But I don't have them and they are in the process of being put together right now, but they are not reports. What they are are various schedules and things the appraiser will use to testify from. As I said, I will make them available before the man testifies, but I don't have them and they are not reports.

With respect to Mr. Marcou, I have no reports.

What I advised the court before and advised Ms. Hynes before was that -- I want to be completely forthcoming -- was that I understand Mr. Marcou has prepared or has had prepared for him internal memoranda within his firm, and we did not, nor did your Honor, believe those to be reports within the meaning of the rules.

Again, if and when we call Mr. Marcou and Mr. Fawcett -- I will get to that in a minute -- we will prior to the testimony make available any documents which they will seek to introduce or we will seek to introduce through them or which will be utilized by them during the course of their testimony.

There are no formal experts' reports to us being prepared. I have had no reports submitted to me as a report. But I am aware I advised your Honor before, a month or a month and a half ago, that they have internal memorandum within the firm of Marcou & O'Leary. Those are not reports, those are memoranda, say, from Fawcett to Marcou or from somebody else to Marcou, and I don't know whether those reports --

THE COURT: What about underlining documents upon which these experts are going to rely?

You must know that by now, if they are going to be your expert.

MR. ARKIN: Well, if your Honor please, the underlying documents of which I am aware are pretty much the ones that have been brought about during the course of this trial; the 1985 land --

THE COURT: That is too generalized a statement.

You get from your experts today the documents upon which they are going to rely on; furnish a list of those to the government tomorrow morning.

MR. ARKIN: Well, with respect to Mr. Marcou --

THE COURT: Any expert you put on the stand, even if you have no formal report from him.

If he is going to rely on documents, the government is entitled to have those documents as quickly as possible, not the night before he testifies, and since these experts have been spoken to, I gather they know what they are going to testify about and you know what you are going to ask them. So get today the list of the documents that your experts are going to rely on and furnish that document to the government by tomorrow morning.

MR. ARKIN: Okay.

One piece of clarification.

Some of the documents upon which, say, Marcou will rely are ones that I just spoke about, such as the 1985 land use study.

On the other hand, certain documents are ones which they are in the process or at least one is in the process of generating.

For example, schedules.

I don't know if I can give your Honor a list of those, because I don't know what they are yet.

(Continued on next page.)

THE COURT: As soon as you find out. But I am positive that there is a lot of material that your experts are going to refer to which you know they are going to refer, because you have gone over this case with your experts. And that list should be furnished to the government.

MR. ARKIN: To the extent, your Honor, that we have them, I will provide it tomorrow to the prosecution.

With respect to Mr. Marcou, I have not personally spoken to him since last Thursday. I was out of the city.

When the question arose sometime ago with respect to all of my experts with respect to whether they should speak to the government, I gave them the same speech I gave to every witness, and perhaps it is not strong enough, that you have no obligation to speak to the government, on the other hand you have a right to, you are a free citizen. The only obligation you have is to tell the truth.

I have never instructed any witness to speak to the government, which I don't do in any case.

On the other hand, they are experts and I don't see that they have any obligation to speak to the government before they testify. That is our position.

gtjw 2

MR. KAUFMAN: Your Honor, number one, when Mr. Marcou spoke to me Thursday evening, he was very clear that he had spoken to a defense lawyer on Thursday. I never said it was Mr. Arkin.

Number two, Mr. Avellanet was made available to the defendants by court direction.

I think the same results should obtain here.

But with respect to what instructions Mr. Arkin gave Mr. Marcou is not necessarily in point, because I have not indicated that it was Mr. Arkin that Mr. Marcou spoke to on Thursday, and it was clear from Mr. Marcou that whereas in the morning he was willing to see me and he just had to check his calendar, that by the evening he had changed his tune to the extent that it would serve no useful purpose after consulting with some defense lawyer.

MR. ARKIN: Mr. Avellanet, by the way, is not an expert and was not an expert. These are experts --

THE COURT: Isee Mr. Lavinsky is on his feet.

MR. LAVINSKY: Yes, your Honor.

I spoke with Mr. Marcou on Thursday. I made clear to him precisely what Mr. Arkin has indicated to your

Honor.

The choice of whether or not to speak with Mr. Kaufman was strickly his own. He indicated to me, as a matter of fact, that he preferred not to speak to Mr. Kaufman, and I made clear to him that that choice is his own.

Also as far as Mr. Avellanet is concerned, I would like to point out that Mr. Avellanet was willing to see us, that he was prepared to see us on a Saturday evening and that the government had insisted that he not see us that evening but see them that evening, and that was the reason why we had to apply to your Honor.

THE COURT: There does not seem to be any connection between the Avellanet situation and this at all.

MR. FLEMING: Your Honor, if I had been advising these witnesses, I would advise them differently.

My understanding is that the government has no right to speak to an expert.

THE COURT: Well, whatever the understanding is, I gather that no expert has been told not to and the decision is theirs and we will leave it at that.

MR. FLEMING: As far as my understanding is, I would just give my own observation.

THE COURT: There is one other point.

You say there is a possible substitution of a --

MR. KAUFMAN: Mr. Lavinsky introduced Mr. Fawcett as a possible witness. He works in Mr. Marcou's firm. I think we are entitled to know who the expert is going to be who is going to be called.

THE COURT: Fawcett or Marcou?

MR. ARKIN: At this point, I cannot honestly say whether it will be any of them, either of them or both of them. We have not made that decision as of this point.

I will say this:

We will advise the prosecution, your Honor, promptly upon making that decision.

THE COURT: How long is the defense going to take?

You asked for a recess so that you could go to Albuquerque and come back with a more definitive idea of how long the defense would take.

MR. ARKIN: If your Honor does not bind me, I can say two to three weeks is my best estimate at present.

THE COURT: That is quite vague, isn't it, two to three weeks?

MR. ARKIN: Well, I wouldn't say it is very vague, your Honor.

I will say --

THE COURT: I will say you are giving me a minimum and a maximum, but after knowing what the government's case is and sitting down and spending five or six days working out your defense, which I am sure it is not the first time you thought about the defense, you ought to be able to come up with a better estimate than two to three weeks.

MR. ARKIN: The reason I do that, I don't know how long cross examination will take is one thing.

THE COURT: You know my question is, forget about cross examination.

How long is it going to take you to --

MR. ARKIN: If we forget about cross examination, if your Honor please, I would think two weeks, two weeks of our testimony should do it.

THE COURT: Do you agree with that, Mr. Fleming?

MR. FLEMING: I don't know, Judge.

I would think that that is fairly close.

Putting the question of the defendants' testimony aside, I could be sure.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Your Honor, I would have to abide by the opinions of the other two counsel.

THE COURT: All right.

MS. HYNES: Your Honor, I think I do have some other items.

One, I would make an application that in light of the list of experts that Mr. Arkin has served as directed by the Court, Mr. Fawcett is not on that list.

Your Honor has held us to a very rigid standard with respect to experts and, therefore, I would make the application that Mr. Fawcett cannot testify as an expert because his name is not on the expert list --

THE COURT: That application is denied. If they put him on the list, I'm sure they will not come on a day before, and if they do I would then grant your motion.

But for two to three weeks for the defense to submit its case, if they give you adequate notice of the expert, that is sufficient.

MS. HYNES: Okay.

Your Honor, can we know what adequate notice is?

At this point we are beginning the defense case. We have no documents. Mr. Arkin keeps saying he really doesn't know, he doesn't know who he is calling, nobody has given him reports, he has preliminary reports. We certainly should have the preliminary reports.

THE COURT: I have not heard anything about preliminary reports from Mr. Arkin. I heard it from you, but he says no.

MS. HYNES: He says he has internal memoranda --

THE COURT: That is not preliminary reports.

MS. HYNES: He has earlier characterized it as a preliminary report.

MR. ARKIN: No, I did not.

THE COURT: He keeps nodding his head no, Ms. Hynes, and you keep saying it and he says no, he does not have it, and I gather he knows better than you do what he has.

MS. HYNES: My reference was to the record, your Honor.

I have another application.

We have been told that the defendants expect to call this morning a photographer Dick Kent and we have reviewed the photographs that Mr. Kent has taken and presumably that the defendants wish to offer into evidence.

In view of your Honor's ruling that the film, and many of these are from the air, if not all of them -- in view of your Honor's ruling that the film that the government had prepared could not come into evidence, that it was cumulative and it showed nothing further than what was already depicted on the mosaic, given the fact we already have two promotional films of the defendants already in evidence which show the property, these photographs are just additional photographs of the property. Many of them cover the exact same things that are covered in the promotional film.

In addition, we have such things as a Halloween party in the recreational center, shots of the Felco Jewelry factory, inside the Felco Jewelry factory.

Basically, our application would be to have your Honor review the photographs, it will not take more than ten minutes, and you can see that these photographs are, one, cumulative, two, they show defendants additional versions of the property without the government having had the right to introduce its version, its film of the property, there are shots of the undeveloped portion of the property on these photographs which were specifically covered by the government's film which we were not entitled

gtjw 9

to introduce because your Honor has ruled it is cumulative.

There is abundant support that this offer by the defendants is nothing but cumulative and is yet a third version by the defendants of the property when the government has not been entitled to puts its version in at all with respect to film.

end tlb

THE COURT: Ms. Hynes, the rule of cumulation goes against the party that is offering it. That rule was exercised against you, and I think properly so, in view of what you already had in the record. But that does not prevent a defendant from putting in his version, on your theory that is cumulative of what was put in.

MS. HYNES: No, your Honor, the film --

THE COURT: I will let them put in anything they want until I think they have cumulated their evidence.

I ruled. I heard you very clearly. I heard your point. I rule against you.

MS. HYNES: Your Honor, just for the record, one of the films the defendants put in, "The New World of Living," the Robert Vaughn film, these photographs are duplicative of defendants exhibit "New World of Living", it shows the golf course there, the houses --

THE COURT: Objection overruled. Cumulation goes to your case, not to the defendants case. You can't bind the defendants by what you put into evidence. I will rule on cumulation on their case as it goes on.

Bring the jury in.

(Jury present)

THE COURT: Good morning. Ladies and gentlemen of the jury, you will notice that the defendants

Irving Blum, Herman Oberman and Solomon Friend are not here.

For purely legal reasons with which you have no interest, they are no longer defendants in this case. This should not in any way influence your thinking one way or the other as to the remaining defendants who are still in the case. I will speak to you more about this at the conclusion of the case. You will proceed.

MS. HYNES: Thank you, your Honor.

Your Honor, the government will offer 1552 for identification in evidence.

THE COURT: I think that's already been in. It was ruled on by me on Wednesday.

MS. HYNES: It was ruled on, your Honor. It is just not marked in evidence. Can I show it to the jury?

THE COURT: Yes.

(Government's Exhibit 1552 received in evidence) xxx

MS. HYNES: Government Exhibit 1552 shows the offices held in ATC Realty, the defendant ATC Realty, by defendants Chester Carity, Henry Hoffman, Howard Friedman and Dan Friedman.

Your Honor, may I show 1553 to the jury?

THE COURT: Yes.

MS. HYNES: 1553 is a chart of the positions held by the defendants Chester Carity and Howard Friedman in Double R Realty.

1551 is the offices held in Rio Rancho Estates, Inc., by the defendants Carity, Hoffman, Howard Friedman and Daniel Friedman, covering the years 1971 to 1975.

MR. FLEMING: May we come to the bench?

THE COURT: Yes.

(At the side bar)

MR. FLEMING: Your Honor, the charts have been changed from the ones we saw.

THE COURT: By taking out the defendants who are dismissed.

MR. FLEMING: I understand. I object to that because I think it is misleading for two reasons.

One, it gives an indication that the defendants who were dismissed held no corporate capacity during the period in time --

THE COURT: No, this is a representation to the jury as to the offices held by the defendants on trial.

MR. FLEMING: The second objection which

I have to this particular chart which has to do with shareholders is that the increase or decrease in shareholdings as they appear on the chart of course show either acquisition or disposition by sale of securities. I think it is misleading without the other defendants on the chart.

For example, the defendant Oberman, whose case was dismissed, I believe liquidated virtually all of his holdings sometime in 1969.

THE COURT: This is being introduced, I assume, to show the motive of the defendants and what they individually held.

The jury is entitled to know that.

MR. FLEMING: That is precisely my point. The truth is that the defendant Oberman at least did dispose of a substantial number of shares of his stock, in fact I believe virtually all of them. No criminalty was proven by that fact. I think this exhibit is prejudicial.

THE COURT: Objection overruled.

MS. HYNES: For the record --

THE COURT: Objection overruled. Go ahead, show it.

(In open court)

MS. HYNES: Government Exhibit 1550, I

believe, subject to some verification, this is a chart of the offices held and the stock owned by defendants Chester Carity, Hank Hoffman, Howard Friedman and Dan Friedman in AMREP Corporation, and the chart covers the period from 1961 to 1975.

It also designates the executive committee and the number of shares outstanding in AMREP Corporation in 1963 until 1965 -- '75, I am sorry.

Your Honor, at this time I will read Government Exhibit 657 in evidence.

Government Exhibit 657 in evidence is a memorandum to Sherman Lurie from Jim Colegrove, dated FEbruary 9, 1973, Subject: Albuquerque Homes Sales Market.

(Ms. Hynes read from Government Exhibit 657 in evidence to the jury)

MS. HYNES: Your Honor has already ruled in evidence the documents with respect to Counts 71, 2 , 3 and 5.

end t

At this time the government offers 179, together with 179-A.

XXX (Government's Exhibit 179-A was marked for identification.)

THE COURT: Any objection?

MR. FLEMING: May we see it, your Honor?

THE COURT: That was the one Ms. Thompson was going to get.

MS. HYNES: That's correct, your Honor.

MS. CROSS: Your Honor, may we approach the bench?

THE COURT: Yes.

(At the side bar.)

MS. CROSS: I am trying to connect this with this.

MS. HYNES: 1629 as an identification of the commercial appears in Government Exhibit 179. At the last meeting we asked to have produced 1629. Ms. Thompson this morning produced scripts which have been marked for identification 179-A. The script is a radio script entitled "Better Way," it has RR-1629-A which Ms. Thompson advises me is the radio commercial which 179 shows was the radio commercial of "Better Way" which was aired.

MS. CROSS: That is not my understanding of it.

My understanding was that we can't find 1629. We produced 1629-A but we have no way of knowing if that is 1629. It would appear not to be, but in an abundance of caution we produced 1629-A.

MS. HYNES: Ms. Thompson advised me --

THE COURT: Where is Ms. Thompson?

MS. CROSS: She left, I guess.

THE COURT: You can hold this up, then, Ms. Hynes, until we get her in and have her put on the record what she told you.

(In open court.)

MS. HYNES: Your Honor, putting aside the two items we just mentioned, the government rests.

THE COURT: You may proceed.

MR. FLEMING: Your Honor, we have certain applications we would like to make out of the presence of the jury.

THE COURT: In addition to the ones I heard on Tuesday and Wednesday?

MR. FLEMING: Yes, your Honor.

THE COURT: The jury is excused.

(Jury not present.)

MR. FLEMING: If your Honor please, this is a motion I am arguing on behalf of Mr. Carity and Mr.

Daniel Friedman, but I think I am authorized to argue also on behalf of the other defendants, although Mr. Arkin may wish to add a few words. It is a motion for a mistrial at this time.

We are all familiar with the background of this case, if your Honor please, and I think it is fair to say that the government in this case, having had the case for investigation for the period of time which it did have it, having had the case pretrial for approximately one year in order to make determinations, named as defendants both Mr. Oberman and Mr. Friend and used evidence against Mr. Oberman and Mr. Friend which could have been used only had Mr. Oberman and Mr. Friend been named as defendants in the trial.

Moreover, having read through the argument which both Ms. Hynes and Mr. Kaufman made in opposition to the motions to dismiss on behalf of Carity and Friedman, Carity, both Friedmans and Mr. Hoffman, substantial reliance was placed upon both of the pieces of evidence used because Friend and Oberman were in the case, a reliance which I believe demonstrates the prejudice of those particular pieces of evidence, a prejudice which I think cannot be cured and they were in the case only because the government persisted in bringing those two men to trial.

The first is the testimony of Avellanet that Oberman sometime in 1966, at a private consideration, at which only Oberman was present, said that he expected that only 5 per cent of those who purchased land would ever move to Rio Rancho. A substantial portion of the argument that I read was based upon that assertion with regard to the 5 per cent expectation.

That testimony is not admissible against any of the defendants presently on trial. The admission of that testimony which was proper, of course, in view of the manner in which the government chose to bring the case, despite I think the recognizable paucity, if not invisibility, of any evidence against Mr. Oberman, requires a mistrial.

Second --

THE COURT: Pardon me, at that point, his testimony is certainly admissible against the corporation.

MR. FLEMING: I can't say yea or nay on that, if your Honor please.

THE COURT: I have no doubt about it. If the jury finds from all the evidence that it was done with the authority of the corporation, it could be binding on the individual defendants.

MR. FLEMING: With regard to that particular comment, I am not talking about the Avellanet report itself or the --

THE COURT: I understand.

MR. FLEMING: With regard to the specific comment by Oberman that he expected only 5 per cent would move to Rio Rancho, I don't think there is any way in the world that that can be possibly held as binding against any of the individual defendants.

THE COURT: There is no doubt it is binding on the corporation.

MR. FLEMING: Putting that aside, if your Honor please, even if it is, it cannot in that fashion be imputed to the individuals against whom knowledge must be brought directly.

I think it is a terribly prejudicial statement. I think the degree of prejudice is reflected by the reliance which the government placed on that declaration in the arguments they made to your Honor with regard to sufficiency as a whole.

Again I state again, given the paucity, the invisibility of the evidence against Oberman, it is a fair statement to say that Oberman was named in order to admit that declaration in evidence.

Second, with regard to Mr. Friend's grand jury testimony, that, of course, was argued at length pretrial. There is no question that the government was proceeding at its peril in connection with Mr. Friend. Immediately before the beginning of the trial, that is on November 3rd, after the Court of Appeals had ruled, I had asked for a severance of Mr. Dan Friedman and Mr. Carity by reason of the possible admissibility of some of the Friend declarations.

Your Honor said at page 9 -- I said I am making my point only on severance. Your Honor said at page 9 on November 3rd, "I understand that and I deny your motion. There may be an accumulation at the end of the government's case and you can say that the government was so anxious to get you that they severed you out of the case as this is their problem. I said this five times if I have said it once. They may end up with a couple of corporations in there, but that is their problem."

I quite agree with your Honor, it is their problem, and we have stated consistently both pretrial and during trial that they are proceeding at their peril in that regard.

Specifically, in Mr. Arkin's memorandum directed to the Friend testimony which was read to the jury, he suggested that the government at least simply offer the Friend testimony in order to complete their case against Friend but certainly not read it to the jury until a determination as to the sufficiency of the case against Friend had been made.

The Friend grand jury testimony is in evidence. There is no question it could not have been in evidence but for Mr. Friend's presence in this trial. The government was on notice of that from the very first moment we filed our motion. They knew our position with regard to that. They proceeded, I believe, at their peril.

I point to all of Friend's grand jury testimony, but I point specifically, your Honor, to the testimony which in my estimation deprives us of the right of a fair trial by a jury which we have selected, and that is the testimony in which Mr. Friend gave his opinion as to precisely how long it would take to develop all 19,000 acres of Rio Rancho.

It is testimony which in my judgment would not have been admissible against the other defendants, even if Mr. Friend had testified on the witness stand, since it was simply his opinion. Perhaps admissible against Mr. Friend in a separate trial, but not against the other defendants.

In this case it has come in in a more poisonous way, the government knew it, they did it at their peril. It came in in a way which was not subject to cross examination.

I don't think there is any way that the jury can disregard or be protected against the inference that Friend at the grand jury was speaking for all of the individual defendants when in fact he was not.

Clearly it must be struck, and, your Honor, I do not believe we can get a fair trial from this jury with that evidence. Again I say the government proceeded at its peril in this regard. They were certainly alerted to it forever and a day during the pretrial and during the trial, as your Honor noted yourself. If they are out to get you, they may end up with just a couple of corporations.

I respectfully request, your Honor, that a mistrial be declared with regard to the defendants Chester Carity and Daniel Friedman. With regard to Daniel Friedman specifically, as I noted the other day, there is no evidence in this regard connecting Daniel Friedman with the so-called Avellanet report, there therefore is no evidence connecting Daniel Friedman with any knowledge of falsity with regard to the northwest growth representation.

Assuming, as your Honor has found, that there is sufficient to hold him in the case, perhaps on allegations prima facie, at least, Mr. Daniel Friedman is in the position of facing conviction on a theory or possibility of a theory of falsity to which he is not connected, a matter which was discussed in the case of United States against Natelli.

Overall, because of the Oberman testimony -- the Avellanet testimony with regard to the Oberman declaration of 5 per cent, the use by the government, knowing their peril, of the Friend grand jury, which clearly is not binding upon us or would not have been admissible against us at any separate trial, the manner in which the government proceeded in the course of the evidence against both men, I move for a mistrial in regard to Daniel Friedman, Carity, Howard Friedman and Henry Hoffman and alternatively with regard to Daniel Friedman I move for a mistrial because of the exposure he has to conviction on a theory of prosecution to which he is not connected so far as evidence of falsity is concerned.

(Continued on next page.)

THE COURT: I gather you are moving for both?

MR. ARKIN: We are joining in that application, your Honor.

THE COURT: All right.

MR. ARKIN: I have nothing to add to what Mr. Fleming has said besides to, again, reiterate to your Honor, that the Solomon Friend testimony was the last item of evidence read.

THE COURT: If you join in it you join in it. That's the end of it.

MR. LAVINSKY: Your Honor, I would like to join in it, also, on behalf of the corporations, particularly based upon the latter testimony, forgetting about Mr. Avellanet.

It seems to me what Mr. Friend has to say simply cannot be wiped out from the minds of the jury. When they think about two centuries that it is going to take to develop this property, there is no charge in the world that is going to take thatout of the minds of the jury once they have heard it.

Your Honor did say it was only binding on Friend, but I submit to your Honor thatnow that Mr. Friend is out, that remains and there is no way that it can be expunged.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, with respect to Mr. Fleming's statement about the testimony of Avellanet, I just want to correct the record that at least my recollection is that Mr. Avellanet testified that the conversation he had with Mr. Oberman was at a meeting that was attended by Mr. Walsh and Mr. Sommerholder, it was not a personal one-to-one meeting with Mr. Avellanet and Mr. Oberman. Mr. Katzenberg was also present.

MR. FLEMING: I think that is true, your Honor. I accept that.

MS. HYNES: With respect to the 5 per cent mentioned by Mr. Oberman, that appeared in the final report that was submitted by Harman, O'Donnell & Henninger to the corporation and which has been connected to defendants Howard Friedman, Henry Hoffman and Chester Carity with respect to their receiving copies of that report.

With respect to the grand jury testimony of Mr. Friend, your Honor accepted the testimony only as against Mr. Friend and cautioned the jury with respect to that.

The government had urged on the court that it was also admissible against the corporation under the Kahn case. Your Honor rejected that.

We still think that is a viable theory and is supported by the Kahn case.

But, in any event, your Honor has cautioned the jury that that testimony wasonly admissible against Mr. Friend.

Your Honor, we have nothing further to add.

THE COURT: The motion is denied.

MR. FLEMING: If your Honor please, we would move to strike Friend's grand jury testimony.

THE COURT: I will reserve decision on that.

MR. FLEMING: We would move also to strike Avellanet's testimony with regard to his conversation with Oberman about the 5 per cent.

THE COURT: That motion is denied.

MR. FLEMING: Your Honor, we would move also to strike the alleged statements made by salesmen to various purchaser witnesses which have not been connected to the defendants. We point to the cases set forth at page 22 of our brief, Barrett against the U.S. and U.S. against Corlin.

The Barrett case your Honor has read, I'm sure:

"Unless Barrett can in some way be connected with these statements, it seems clear he cannot be held criminally responsible for every statement or promise made by a salesman who drew upon his imagination instead of gtjb

his authority to close a contract."

The language to the same effect is in the Corlin case.

Second, if your Honor please, there is no question that the representations that the purchaser witnesses said were made to them by various salesmen in private -- I am not talking about the podium presentation, I am talking about salesmen's representations in private either at a dinner or at the property -- they were diverse and inconsistent in nature, idiosyncratic, if I may say, and in various cases it has been held that that type of idiosyncratic and inconsistent statements cannot be held in a scheme to defraud in any event quite aside to connection.

I would cite your Honor to Bliss v. U.S., 354 F.2d 456. That was decided by the Eighth Circuit through then Circuit Judge Blackmun.

He said, "One must recognize, as the defense asserts, that it has been said that a mere succession of unrelated and diverse swindles, even though they possess a common stage;" and that would be here, "is not within reach of the mail fraud statute."

He cites McLendon against the U.S. at 2 F.2d 660 and Dyhre against Hudspeth at 106 F.2d 286.

There is the same kind of situation where there were inconsistent, diverse and really idiosyncratic representations testified to. They did have to do with what Justice Blackmun called the common stage, that is land, but they were not sufficient to constitute a scheme.

So by reason of the failure of the government to connect any one of these defendants to these private, alleged private statements by salesmen to purchasers either at the parties or at the dinner, we believe that testimony must be struck and, in addition, since it was diverse and inconsistent, indeed, idiosyncratic, even though having to do with land, we believe it must be struck because it could not form a scheme in any event.

As I say, I am not talking about the podium presentations or the film or the promotional literature, I am talking about those diverse statements made by individual salesmen according to the testimony of individual purchasers either privately at a dinner party or privately at the property.

THE COURT: Any more?

MR. FLEMING: Yes, your Honor, one other.

I don't know whether to characterize this as a motion to strike or not, if your Honor please, but it seems to me that it follows from the dismissal of the defendant Friend -- I am trying to focus on literature, films, brochures -- speaker presentations to the degree that that may be relevant by reason of Friend's review of those presentations -- focusing, for example, on "This is My Land," the evidence is clear, and I think it was argued on Mr. Friend's behalf, that Mr. Friend reviewed the existing "This is My Land" and made changes in that document.

Now, it seems clear to me that if Friend reviewed it and made changes, then in addition to reviewing it -- in addition to making changes, he was ratifying what was unchanged, and in view of your Honor's determination that Friend was not shown to be a participant in fraud, it seems to me to follow that "This is My Land" which was read by Friend in which changes were made by Friend and in which changes were not made by Friend, the document which was substituted sometime around 1972 for the preexisting "This is My Land" must be taken as a document which is not fraudulent and which does not contain false or misleading statements.

THE COURT: Why?

MR. FLEMING: By reason of the fact of your Honor's determination that Friend's review of that, the changes he made in that were not sufficient to characterize

Friend as a guilty participant in any scheme.

THE COURT: But that doesn't mean the document itself didn't contain misrepresentations for which the remaining defendants might be liable.

MR. FLEMING: But your Honor is talking about the original document; my attention is focused on the new one, the one that Friend reviewed and changed.

THE COURT: He may have changed it, but he may not have changed it with an intent to defraud.

MR. FLEMING: I understand that.

THE COURT: Or he may have left it because he didn't know.

MR. FLEMING: I understand what --

THE COURT: I am not getting your argument.

MR. FLEMING: Well, if a man takes a document to review --

THE COURT: Right.

MR. FLEMING: -- and the evidence is clear that that was done, and he makes some changes and does not make others --

THE COURT: That's right, without any knowledge of the background.

I come into a corporation that has been selling land for eight years and they show me something, I make changes. They are just my changes. It doesn't mean what is left is good.

MR. FLEMING: But the changes that were made are in the only areas where evidence of falsity has been offered.

THE COURT: I don't know why he made the changes.

MR. FLEMING: I understand that.

THE COURT: But that doesn't mean the statements that were made were still not false.

He may not know they were false, he might be making changes of language.

(Continued on next page.)

MR. FLEMING: I understand that, your Honor.

I find from your Honor's opinion that you feel that the changes he made were consistent with his obligation and produced a document that was not misleading.

May I have just a moment?

(Pause)

MR. FLEMING: Mr. Sprizzo points out, if your Honor please, the Court's opinion says even if Friend knew of a scheme --

THE COURT: He did not participate.

MR. FLEMING: Exactly.

And so I say when you take the document, which is the second one, 389 -- is that the number? -- 389, which is the second version of "This is My Land," which is the version which was reviewed and changed by Friend carrying out his obilgations correctly, as I believe your Honor has found, you have a document which reasonable men could not conclude beyond a reasonable doubt is a false or fraudulent document.

THE COURT: That isn't what I said.

The motion is denied.

I don't see, frankly, how an argument can be made from the change, but this is something the government has to worry about in summation.

MR. FLEMING: I am sorry, your Honor, an argument --

THE COURT: I have problems in finding how the government can rely on 389 as supporting its contention, but that is their problem in summation.

MR. FLEMING: I agree with that, your Honor.

THE COURT: But it is not sufficient for me to strike the document.

MR. FLEMING: My argument is that where an attorney is engaged with in-house counsel and the testimony is he looks at a document and reviews it, makes the changes that he believes should be made, where your Honor has found, I think quite correctly, that --

THE COURT: Would that leave the inference that before he changed it the document was inculpatory of these defendants?

MR. FLEMING: I think that is a question, but I think the question I am addressing myself to is --

THE COURT: Is as to 389.

MR. FLEMING: 389.

THE COURT: The motion is denied.

I think I reserved my decision on your motion to strike Mr. Friend's grand jury testimony.

I am changing that.

gtjw 3

The motion is granted. It was admissible only as to Friend in any event.

You moved to strike the salesmen's statements to purchasers as not binding on the defendants because of the government's failure to connect those statements with the individual defendants.

Ms. Hynes?

MS. HYNES: Your Honor, with respect to that, without Mr. Fleming particularizing what salesmen's statements he is talking about, it is very difficult to respond to that, because I am sure that Mr. Fleming is not arguing that every single statement made by a sales person to a customer was an unauthorized statement.

THE COURT: No. I assume, for example, you had a witness on the stand who said that they could resell in a couple of years. That is one that comes to mind. And this goes to the guts of your case, doesn't it?

MS. HYNES: Okay.

With respect to "You could resell within a couple of years," basically, our contention is that we had specific representations, let us take the example your Honor has given, the salesmen's statements, the salesmen were trained on the basis of promotional material.

We also have the tapes that salesmen were, indeed, trained and there were statements that they could make.

There are statements in promotional material -- I can get the references in just a moment --

THE COURT: That would sustain that statement by the salesmen?

MS. HYNES: Yes. Which give the indication that you can resell your property in a few years, that property has increased in value and that these are the increases over a few years.

Basically, our --

THE COURT: Wait, wait, wait.

It is true that they made those statements and those statements were based on increases in prices by the corporations. But does that sustain a statement that you can resell it, that there is a resale market?

That was a separate argument made by you, that there was a resale market when, in fact, there was not a resale market.

MS. HYNES: Your Honor, when you deal with land increasing in value, the testimony has been from the purchasers that when they were told that the land was increasing in value they believed that it was increasing in value because there was a market for it; that value means ability to resell.

The examples that they give in the pamphlet "This is My Land" give examples of land being sold in as little as one year and it goes on to several other years, but they are giving increases in prices --

THE COURT: That is not what Mr. Fleming is talking about.

He is talking about a specific recommendation that you can do this in two years.

MS. HYNES: Now we are changing it, your Honor.

Your Honor said to me --

THE COURT: I am not changing it. I am saying, that whatever that witness says, whose name of the witness I have forgotten, I think it was a woman, who said she was specifically told by a salesman that she could resell in two years. That was an affirmative representation made.

MS. HYNES: Your Honor, I --

THE COURT: Now Mr. Fleming says that should not be allowed in or brought to the attention of the jury as probative of anything against these defendants because they didn't know of the statement and there was no basis as far as any seminars and instruction material given to the salesmen were concerned that such statements would be made.

That is his argument.

MS. HYNES: Your Honor, the comparison here was made that this was an investment, that you could make money, that you could profit from it.

The only way you can make money and profit from it --

THE COURT: We are not talking about that, Ms. Hynes. We are talking about a specific representation made by a salesman.

You have plenty of evidence on the other stuff.

MS. HYNES: Okay.

THE COURT: He wants to strike a specific representation.

MS. HYNES: If I had the specific representation I might agree with Mr. Fleming. But I need it.

THE COURT: I just gave it to you.

A witness said she was told by the salesman that she could resell in two years.

Now you have the specific representation.

MS. HYNES: Assuming the testimony was that she could resell in two years, then I would refer to

"This is My Land" with the examples of property that were sold within two years, and the statement being made, as the lead into this, that "Recent land transactions in the outer areas of greater Albuquerque offer the most dramatic evidence that good land, well located, in an area where growth and expansion are taking place, is one of the surest and safest ways to make handsome returns on your investment, and the following are but a few examples. The facts are self-evident."

Then it shows profit per year on various land transactions.

THE COURT: I will tell you what you do, Mr. Fleming. You make a list of the specific representations that you want stricken.

MR. FLEMING: Yes, we will, your Honor.

THE COURT: And Ms. Hynes will answer them.

MR. FLEMING: Yes, we will, your Honor.

One final thing which is a matter of administration.

As your Honor knows, we subpoenaed Mrs. Swift as a witness for this morning.

I received a call from her this morning saying that she couldn't get here because she had flebitis.

THE COURT: That is a new disease running around.

MR. FLEMING: Yes. It is contagious.

I did call Dr. Gitman -- and I put my $1.50 in, which is all the change I had, the secretary said, "Maybe I can help you. The doctor does not think Mr. Switt should travel for a week."

I said, "Well, can I speak to the doctor?"

She said, "Hold on."

And my time ran out.

So I will continue to reach the doctor some more.

Mr. Paul Mahon, who works for International Telephone and has been conducting an investigation for me, a former IRS special agent, served a subpoena and it is interesting that he reports that -- this was, I think, on Friday --"that from 11:15 a.m. until 12:05 p.m., that is fifty minutes, Selma Switt had not been off her feet and principally spent all this time in the kitchen in my full view."

We had hoped to have her here this morning, if your Honor please. We will continue to try to get her here.

THE COURT: The same message was left with my chambers, and I told my law clerk to give you the doctor's phone number.

If the doctor says that that is his advice, I would not contradict the doctor, unless you want to have a doctor sent out there to look at her.

MR. FLEMING: If the doctor would talk to me, I would take whatever steps I thought appropriate, but I ran out of money.

THE COURT: We will have a short recess and then we will go directly to 1:30. We will not meet this afternoon.

(Recess)

d t

T4A

(In open court - jury present)

THE COURT: You may proceed.

MS. CROSS: The defense calls Dick Kent.

DICK KENT, called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

XXX

BY MS. CROSS:

Q Mr. Kent, what is your address?

A My home address is Box 294, Corrales, New Mexico.

Q What is your occupation?

A Commercial photographer.

Q How long have you been a photographer?

A Thirty years.

Q Did you take some photographs of Rio Rancho Estates last summer?

A I did.

Q How did you take them?

A From a helicopter.

Q About how high was the helicopter?

A About 500 feet off the ground.

Q Did you take straight downs or obliques?

A Obliques.

Q What date did you take them?

A On July 29, 1976.

Q Mr. Kent, showing you what has been marked as Defendants Exhibit FT for identification, can you identify it?

A Yes. I looked at these slides last night, put my name on this tape. Those are my slides.

Q These are the pictures you took on that date?

A July 29, 1976, yes, ma'am.

Q Are those slides fair and accurate representations of the scenes that you took at Rio Rancho?

A They are.

Q Showing you Defendants Exhibit FU to HA for identification, can you identify that?

A Yes, ma'am. T hese are prints made from the slides I took that are in that carousel tray.

[illegible] each of those prints identified on the [illegible] is a picture of?

[illegible] ma'am. Each one is labeled.

[illegible] slides, the identifications on [illegible]

[illegible] They are accurate.

[illegible] slides?

A They are.

Q How does the color compare on the prints to the color on the slides?

A The color in the slides is accurate color. The color is slightly shifted in these prints here.

Q Other than the color, the difference in color, are those prints fair and accurate representations of the scenes described on the back of each one?

A They are.

MS.CROSS: Your Honor, at this time I move to admit Defendants Exhibit FT and Defendants Exhibit FU through HA.

MR. DEVORKIN: I have different objections as to different exhibits.

THE COURT: Make your objections.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

xxx Q When you say the color was slightly different from the slides to the prints, in what sense was it different?

A The green trees in the slides are much greener than they are in the prints.

Q So the greens in the pictures are faded somewhat?

A Yes, they have gone to the dark side, to the black side.

Q Are there any other color differences in the prints and the slides?

A Not significant.

Q You say that the labels on the back are accurate as to what is in each picture, is that correct?

A Yes, sir.

Q Who put the labels on the back of the pictures?

A The young lady who was just speaking put the labels on the back. I checked them and put my initials on them.

Q Did you take each photograph?

A I did.

Q In this set?

A Yes, sir.

Q Was anybody assisting you?

A No.

Q What kind of camera did you use?

A 35 millimeter Pentax camera.

Q With what kind of lens?

A 50 millimeter Takumar lens.

Q Which is what, slightly a wide angle lens?

A No, sir, it is considered the normal lens.

Q When you went to take these pictures, did you receive any instructions with respect to taking them?

A I was to record the area around Rio Rancho Estates from a helicopter.

Q It was left to your discretion as to what you took?

A Yes, sir.

Q Including the ground level shots?

A I didn't take any ground level shots.

Q These pictures here are all air shots?

A They are.

Q Let me show you Defendants Exhibit FU for identification. This is labeled Unit 24E, is that correct?

A That's right. It means Unit 24 looking east.

Q How do you know that this is Unit 24?

A Because I had a map with me. We had streets identified, the key streets. I know that that was Unit 24.

Q Did you make a recording for each photograph in sequence of what you were taking and them match up the photographs later?

A I did, and I have the photographs here.

Q This is a photograph of only a portion of Unit 24, isn't that correct?

A That's correct.

Q In fact a very small portion of Unit 24, isn't it?

A Most of it.

Q What is the distance from the left side of the picture to the right side of the picture?

A Approximately two miles.

Q And what is the distance from the foreground to the background?

A Approximately thirty miles.

Q Were you at the northern or westernmost edge of Unit 24 when you took this picture?

A I have it marked on themap. May I refer to the map?

Q Sure.

(Pause)

A It is the extreme west edge of the property. I have a mark showing that I am at the extreme edge looking east across the property toward the mountains.

Q What angle does your camera take in?

A About a 47 degree angle.

Q So everything on either side of that angle that you see with your eyes is not in the picture, correct?

A That's right.

Q Referring you to Exhibit 1075-A, Unit 24 is up at the northwestern section of the propertv,is it not?

A I didn't think it was that far north. Let me check the map here.

(Pause)

A Okay, yes, you are approximately right.

Q The very edge where there are lines on the map which indicated bladed roads, is that correct?

A Yes, sir.

Q So if you are at the far west edge with a 47 degree angle on the camera lans, you are taking in about half of 90 degrees, is that correct?

A Yes, sir.

Q And everything to the left side of that angle and the right side of that angle would not be in your picture, correct?

A That's true.

Q As you look through the camera you see an angle.

A It depends how far back the camera is whether or not it is picking up the foreground, where it starts in the foreground.

THE COURT: What is the point of this, Mr. Kaufman?

MR.KAUFMAN: The point is the picture

doesn't represent all of Unit 24.

THE COURT: He didn't say it did.

MR. KAUFMAN: I believe he did when I first asked him.

THE COURT: He did not. He said most of it.

Q There are portions of Unit 24 which have different terrain, isn't there?

A It is pretty much all the same.

Q Aren't there portions that have hills or rough terrain?

A This shows some hills, where the streets go like this (indicating).

Q Let me put it this way:

Is there a difference in elevation --

THE COURT: A voir dire is merely as to the accuracy or authenticity, not to argue with the witness what it encompasses.

MR. DEVORKIN: We object to the photographs from one to the next because they are repetitive in and of themselves and I think they are also duplicative of scenes in Defendants Exhibit BR.

THE COURT: Denied.

MR. DEVORKIN: And they are repetitive of themselves, your Honor.

THE COURT: Denied.

Q Are all of these pictures taken looking east or south?

A No, different directions.

Q Are there pictures taken looking west?

A There may be in this set. I will have to go through them to check that. They are mostly looking south, southeast, and east.

MR. DEVORKIN: For the record, your Honor, so everybody knows what it is we are looking at, we are looking at a particular photograph and we should identify which direction each photograph is taken looking toward.

THE COURT: The witness can do that. He can indicate on the back of each photograph what position you were looking when you took the picture, whether you were looking toward the east, southeast, or south.

THE WITNESS: I will do that.

Q Were you given any instructions about taking pictures toward the south, the east, the southeast?

A I was to show the property from various directions.

Q Would you say most of the pictures are to the south, to the southeast, or the east?

A Yes.

Q In any given picture what would the distance from foreground to Horizon be?

A From twenty to thirty miles.

MR. DEVORKIN: May we have the map Mr. Kent referred to marked for identification.

THE COURT: Yes.

(Government Exhibit No. 2000 marked for identification)

xxx

Q On some of the shots of areas with homes the photograph doesn't have -- withdrawn.

The distance from foreground to Horizon is not the same as the shots for open land, is it?

A Correct.

Q Taking, for example, Defendant Exhibit GZ for identification, would you estimate the distance from foreground to Horizon in that photograph?

A Approximately two miles.

Q Do you recall offhand whether there are any photographs of Unit 7 in here?

A I don't recall.

Q And in fact is there a photograph of each unit on the property?

A Not in this set. It does not cover every

every unit.

Q Are there any shots in here of the arroyos on the property?

A Yes.

THE COURT: This is cross examination, Mr. Devorkin, not voir dire.

MR. DEVORKIN: May I just have a moment to look at this, your Honor?

THE COURT: Yes.

(Pause.)

BY MR. DEVORKIN:

Q On Government's Exhibit 2000 for identification, did you place the arrows on this document?

A I did.

Q Do those show generally from what point over Rio Rancho you took your photographs that have just been identified?

A They do.

Q Che numbers that are associated with each arrow refer to what?

A The frame numbers on the reels of film.

Q Are all of those frames on that reel of film included in the exhibits we have just marked and gone through?

A No.

Q There are others?

A There are others.

Q Where are those?

A They were not selected for printing because this was a good sampling of what the property looks like, both out back and in the developed areas.

Q Who made the selection of those?

A This young lady, I assume.

Q Did you do it yourself?

A No.

Q Was there a set of negatives which one could view and then pictures were selected from the full set?

A A set of slides, yes, sir.

Q Where is that full set now?

A In the hands of the attorneys.

Q Were the other negatives that weren't selected printed up?

A Some of them were. I don't know how many.

Q Did you print them up?

A No.

Q Again, the negatives that were not selected, do you know -- do you yourself actually know --

THE COURT: Mr. Devorkin, this is a voir dire on the admissibility of what's offered.

MR. DEVORKIN: I object for the reasons I stated before, your Honor.

THE COURT: Overruled.

MS. CROSS: I think it would be easiest if I showed the slides to the jury, your Honor.

THE COURT: How many are you going to show them?

MS. CROSS: I think there are 33 slides.

THE COURT: No 33 slides. Give them the pictures and they can look at them during the recess.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibits FT and FU through HA received in evidence.)

DIRECT EXAMINATION (Continued)

BY MS. CROSS:

Q Showing you Defendants' Exhibits HB, HC and HD, do you recognize them?

A Yes.

Q What are they?

A Aerial photographs taken November 3,1976, by me from a helicopter.

Q Have you described on the back of them what they are?

A I have. Yes.

Q Are those pictures fair and accurate representations of the description on the back?

A Yes, ma'am.

Q Showing you Defendants' Exhibit HE for identification, can you identify that?

A Yes, ma'am. This is a photograph of the Rio Rancho property I took August 7, 1963.

Q Is that photograph a fair and accurate representation of what it looked like on August 7, 1963?

A It is.

MS. CROSS: I would move to admit Defendants' Exhibits HB to HE.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q Mr. Kent, with respect to Defendants' Exhibit HE for identification, you took that photograph?

A Yes, sir.

Q After you took it did you retain custody of it?

A No, sir. The colored transparency was submitted to the New York office of the company, but I have a black and white negative taken of the same scene at the same time in my file with the date on the negative envelope.

Q Who actually developed the print that is Defendants' Exhibit HE?

A I don't know.

Q You didn't develop it from your black and white negative?

A No. I sent the four by five color transparency to New York and the print was made here in New York.

Q Have you seen that color negative since you sent it to New York?

A Yes, I saw it last night.

Q And the color that is on here -- the green, is it an accurate representation?

A It's very close.

Q What's the difference?

A The print in the transparency is 15 years old. The colors fade slightly. This has a little pink cast to it. It's fairly accurate in that the sky is blue, the grass is green, and some of the ground is brown, so it's an accurate picture.

Q You say the colors have faded a little bit over the years, is that what you are saying?

A Yes.

Q And the label on the back, did you make a record when you first took this picture in 1963 of what it is that you were taking?

A Yes, sir, I have an envelope here in my file.

Q That is the record you made at the time?

A Yes, sir.

MR. DEVORKIN: I object on general accumulation grounds on HE, your Honor.

THE COURT: A 1963 picture is cumulative of what?

MR. DEVORKIN: Of other pictures in evidence.

THE COURT: In 1963?

MR. DEVORKIN: I believe s[illegible] Of some of the promotional material.

THE COURT: Overruled.

Q I show you HD for identification. Without reading it out loud, there is a last line here, correct?

A Yes, sir.

Q Did you write that last line?

A I did. That's my writing.

Q Do you know when the homes in these photographs were built of your own personal knowledge?

A Yes, roughly. I know this row of homes were the first row of homes built at Rio Rancho, that is referred to in the writing on the back.

Q In other words, it is your testimony the homes that appear in HD in the foreground along the roadway are the same homes that appear in HE?

A Yes.

MR. DEVORKIN: I object to HD because it is pictures of the same area that are in Defendants' Exhibits GE, GF and GG, which were just introduced. In fact, the scene in GG is --

THE COURT: Why do you need both of them taken at relatively the same period of time?

MS. CROSS: This one is not the same. These two are not the same, as your Honor can well see.

MR. DEVORKIN: They are not exactly identical, but they are the same road and the same homes taken at about the same time.

THE COURT: Let me see them.

MS. CROSS: If you look at HE and GE together --

THE COURT: What's your objection to HD and GE?

MR. DEVORKIN: I think one of them can come in, but not both of them.

THE COURT: Overruled.

Q HB and HC are pictures of Corrales Heights, correct?

A Yes, sir.

Q GW is a picture of Corrales Heights, isn't it?

A A section of it, yes, sir.

Q And GX is a picture looking from the industrial park toward Corrales Heights, including Corrales Heights, isn't it? Corrales Heights is in the background of that picture?

A Yes, sir, but way in the background.

Q What's the distance from the foreground to Corrales Heights?

A Approximately a mile.

Q And GY is a picture of Corrales Heights, right?

A Yes, sir. A sectionof it.

Q And GZ is a picture of Corrales Heights?

A Yes, sir.

Q And HA is a picture of Corrales Heights?

A From different angles; yes, sir.

MR. DEVORKIN: I would object to all of these photographs coming into evidence, your Honor.

THE COURT: Objection overruled.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibits HB, HC, HD and HE received in evidence.)

MS. CROSS: Could we run through the slides briefly?

THE COURT: No.

MS. CROSS: I have no further questions.

THE COURT: Any cross examination?

XXX CROSS EXAMINATION

BY MR. DEVORKIN:

Q Were there any filters used to take these pictures?

A bone.

Q Not even a skylight filter?

A No, sir.

Q You say there were negatives of pictures you took not represented in any of the pictures we saw, is that correct?

A That's correct.

Q You have negatives of all the pictures you took?

A They have all been turned over to the law firm here.

Q Approximately how many pictures did you take?

A Approximately 95.

Q Did you turn negatives over or prints over?

A 35 millimeter slides, in color.

Q Who made the selection, if you know, to select these prints out of those slides?

A Who made them?

Q Who made the selection, if you know?

A The law firm.

Q You didn't make that selection?

A No, sir.

Q Do you know where those negatives have today --

MS. CROSS: If the government would like to have all the rest of the slides, we will be happy to turn it over to them. They have seen many of them.

THE COURT: Next question.

MR. DEVORKIN: I offer Government Exhibit 2000.

MS. CROSS: No objection.

XXX (Government Exhibit 2000 received in evidence.)

Q There are numbers associated with each arrow, is that correct?

A Yes.

Q And those refer to the sequence of the negatives you took with the camera?

A Right. You are saying negatives, but it is slides.

Q And the arrow indicates the direction that the camera was pointed at approximately when you took that particular picture?

A That's correct.

Q Can you tell, sitting here today or from some notes that you may have, which numbered arrows are the photographs that are in evidence?

A I identified each one of the slides with a unit number showing which unit was in the foreground and what direction the camera was looking.

Q So, matching up the direction described on the photograph with the direction the arrow appears to be pointing on Government's Exhibit 2000, you could tell --

THE COURT: He has been asked to make that notation on the back of the pictures, Mr. Davorkin.

Q If you look at numbers 27, 28, 29 and 30, I am a little uncertain, Mr. Kent. I can't quite tell where the head and tail of the arrow is. Can you tell us?

A My lines point this way.

Q Indicating to the east?

A Yes. The east and southeast.

Q In fact, there aren't any arrows on this diagram which point to the north or west, are there?

A Here's northeast. That's probably as close as I get to north.

Q Everything else is either to the east, the northeast or the southeast, or the south?

A Yes, sir.

Q You didn't take any photographs from over the property looking out to the northwest corner of the property?

A No. No, I didn't.

Q Did anybody ask you to take photographs like that?

A No. I was to record the property.

Q Were you instructed to record the property always looking toward Albuquerque?

A No, it was my discretion.

Q You just did it that way?

A Because looking from -- in most of the photographs looking south, southeast and east, we were showing the rest of the property in the background, shooting from the west toward the east.

Q Each of those photographs, where there is 30 miles from foreground to horizon there is a lot of land you are showing in that one photograph, is that correct?

A Yes. 30 miles of it.

Q Again, a lot of the detail of that land you can't see from a picture of this kind, can you?

A That's correct. We see an oblique view way out there. The detail is not too discernible except the mountain and the valley.

Q What do you mean by oblique?

A At an angle like this rather than vertically or straight ahead. An oblique angle.

Q When you take a picture like that, in fact some of these pictures, it is not always easy to tell the lay of theland in terms of hills and gullies?

A The easiest way to see the lay of the land is to shoot an oblique photograph of it.

Q That's with respect to the foreground. Aren't there a lot of arroyos and rolls of this land you can't tell when you are looking at the foreground?

A The arroyos and hills do show in the foreground. As you look farther back away from the camera, they are less discernible.

Q It gives an effect at a certain point of the land looking flat, doesn't it?

A Out there, yes, sir.

Q If you took these pictures from a higher altitude with the same camera, you would take into the view of the lens a lot more ground, wouldn't you?

A Generally speaking, yes, sir.

(Continued on next page.)

Q You would get more perspective from one unit to the next on the property, wouldn't you?

A I'm not sure the meaning of your perspective.

You get more perspective --

Q You would get a better view of the relationship of one unit to the next unit if you were higher up and more ground in your picture, wouldn't you?

A In a sense, yes.

The vertical aerial photograph shows relative sizes between units.

Q And you could take a still or a motion picture from a higher altitude of this helicopter and take a field of vision of a lot more land, couldn't you?

A Yes.

Q By the way, on the photographs themselves, the unit boundaries are not marked, are they?

A They are not.

Q You have to refer to another map?

A Yes, sir.

Q In fact, the photographs themselves or the land in the photographs themselves does not have blocks or lots that you can see, does it?

A In most cases, the roads are all in, and that's what we went by.

Q Well, when you say roads, you mean the dirt roads are all in?

A The graded roads.

Q Which are dirt?

A Yes.

Q WUen you say the roads are all in, you don't know whether the roads that are plotted have all been installed, do you?

A No, I don't know for sure that all the roads are in.

MR. DEVORKIN: I have no further questions, your Honor.

MS. CROSS: Just one or two.

XXX REDIRECT EXAMINATION

BY MS. CROSS:

Q Mr. Devorkin asked you if you were higher up could you see a broader -- more land, basically, and you said yes.

Would you get more or less detail if you took a picture higher up?

A Less detail.

Q Showing you Defendants' Exhibit GB, you indicated that in these pictures that you generally can see from 20 to 30 miles?

A Yes.

Q And this is a picture of what unit?

A Unit 9.

Q Can you see Albuquerque in the picture?

A Yes. Albuquerque is in the background.

Q Could you point to Albuquerque in this picture?

A Yes. Albuquerque is back here in the valley (indicating).

Q In that area there (indicating)?

A Yes, ma'am, the dark blue area here (indicating).

Q You can even see beyond Albuquerque, can't you?

A Yes. Those are the Monsano Mountains southeast of Albuquerque in the background.

MS. CROSS: No further questions.

THE COURT: You may step down.

XXX RECROSS EXAMINATION

BY MR. DEVORKIN:

Q That picture is from 500 feet?

THE COURT: Yes. He said that already.

Q Would the detail that you see on any given altitude depend on the quality of the camera and the kind of lense you were using?

A Yes.

MR. DEVORKIN: No further questions.

(Witness excused.)

THE COURT: Next witness.

MS. CROSS: Thomas Sennett.

XXX TOMAS WILLIAM SENNETT,

called as a witness by the defendants, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MS. CROSS:

Q Mr. Sennett, what is your address?

A 170 West End Avenue, New York City.

MS. HYNES: May we have the witness keep his voice up, your Honor?

Q Yes. You have to speak loudly so everybody can hear you.

And how are you employed, sir?

A I'm a photographer.

Q How long have you been a photographer?

A About eight years.

Q Where have your photographs been published?

A Just about all over the world.

I have worked for and been published in most magazines are in the U.S. and abroad, English Vogue, National Geographic, Time, Fortune, Sports Illustrated, Smithsonian.

Q Have you been to Rio Rancho Estates?

A I have, twice.

Q And did you take photographs there?

A Yes, I did.

Q When did you go to Rio Rancho?

A In the beginning of August and the latter part of October and the first of November.

Q Did you take photographs on both of your trips?

A Yes, I did.

Q What kind of camera did you use?

A 35 millimeter camera.

Q And did you use any filters?

A Yes, I did.

Q What?

A A polarizing filter.

Q What is the effect of a polarizing filter?

A It cuts down on the glare.

Q The glare from what?

A From the sun.

Q Does it distort in any way the picture that you get?

A Yes. The glare from the sun distorts the color.

Q Does the polarizing filter distort the picture?

A No, it does not; adds nothing.

Q Showing you what have been marked as Defendants' Exhibits HF to JQ, can you identify them (handing)?

A Yes. These are my pictures.

Q Have you a description of each photograph in the back of each photograph?

A Yes, that's correct.

Q Are the descriptions that you have written on the back of the photographs accurate?

A Yes.

Q Did you pose any of the pictures that you took?

A None except one.

In the library at Rio Rancho there weren't any people there at the time and there were two librarians there, and I photographed the librarians in the library.

Q Did any people come into the library subsequent to your picture?

A Yes, as I was leaving a bunch of people came in.

Q Does each of the photographs that you took fairly and accurately represent what you have identified it on the back to be?

A Yes, it does.

Q Are any of the pictures taken off the Rio Rancho property?

A Two pictures of the Cibala High School.

Q Are all the rest of the pictures taken on the Rio Rancho property?

A Yes, they are.

Q Were they all taken from ground level or -- excuse me, withdraw that question.

Were any of them taken from airplanes?

A None.

MS. CROSS: I move to admit them.

VOIR DIRE EXAMINATION

BY MS. HYNES:

Q Mr. Sennett, my name is Patricia Hynes.

I believe you testified that you took pictures on two different occasions, in August and in October, is that correct?

A Yes, I did.

Q Can you tell by looking at these photos which ones you took in August?

A I might make a mistake. I t would have to be to the best of my knowledge.

Q Yes.

To the best of your recollection in looking at the photographs, can you select out the ones that were taken in August as opposed to October?

A I don't think so. I can't tell.

Q Do you recall when you went to Rio Rancho in August, did you take pictures of the undeveloped portion of the property?

A Yes, I did.

Q And did you take pictures of the undeveloped portion in October?

A [illegible]

[illegible]

[illegible]

A Last year.

Q Last year, 1975.

A 1976.

Q Excuse me. It's a new year. That's right.

Was the property -- was the foliage on the property any different in August than it was in October?

A I didn't notice.

Q You didn't notice as a photographer?

A No.

Q These pictures cover for example, [illegible], do you recall whether that was taken in August?

A No. I don't even know whether those desert flowers bloom all year around.

Q In fact, do you know that they don't bloom all year around, it is only a very short period of time that they bloom?

A I don't know.

Q Do you know that they bloom only for a period of weeks?

A No, I don't know.

Q And do you know that that period of weeks is sometime in August?

A No, I did not.

Q Do you know what area of ground this photograph covers?

A Yes. It covers unit 13. All the pictures were recorded, notes were taken.

Q I am talking about the specific photograph is a shot of flowers, is that correct?

A Yes. They are all over the property.

Q And what is the distance between the east side of this photograph and the west side? That is what I am trying to get at. What portion of unit 13 does this cover?

A By the side of the road.

Q Well, is it three feet or -- that is what I am trying to get at.

A 20 or 30 feet.

Q You don't know?

A They were all over.

Q Okay.

And Exhibit HM is a cluster of some of these desert flowers, is that correct?

A Yes.

Q Defendants' Exhibit HO has a designation unit 22 in back of that photograph.

Can you tell which direction this is looking to?

A I'd have to consult my notes exactly.

Q Can you do that?

A Yes.

Q Do you have them with you?

A Yes, I think I did.

But -- this is on the edge of the King property. I believe we are facing north.

Q Do those photographs, the description on the back of the photograph, do not indicate which direction the photograph was taken from, does it?

A No. The photograph is taken over unit 22. This is unit 22 here. I'm pretty sure we are facing north.

I can tell you the exact direction of the photograph by my notes, if you like.

Q When you say it was taken over unit 22, how was it taken?

A Just standing and pointing the camera from ground level and shooting.

Q You were actually on the ground?

A Yes.

Q I see.

A Yes.

Q Did you take notes when you were taking the pictures?

A Yes, we did.

Q And did you have a map with you to locate where the picture was?

A Yes, we did.

Q Were you accompanied by anyone on the property?

A No, not usually, except when we were out in the back, out in the far reaches of the property sometimes.

Q Somebody accompanied you?

A Yes.

Q Did you make the selections as to where you would take the photographs?

A They asked me to cover the entire area of Rio Rancho, all the units and the communities therein.

Q And you did that?

A Yes.

Q Were there any specific directions other than the ones you just described?

A No, not that -- except that we cover everything that was there at Rio Rancho.

Q When you traveled out to the property, did you travel by car?

A Yes.

THE COURT: This is voir dire, Ms. Hynes.

MS. HYNES: I understand.

THE COURT: Traveling by car to take the pictures is immaterial on voir dire.

Q I show you HX for identification (handing).

Can you tell me where that picture was taken?

A Yes.

Q Where was that taken?

A It's right along a macadam road going to unit 11.

Q Pardon?

A It's along a macadam road going to unit 11.

Q Going to --

A Unit 11 is a community in Rio Rancho.

Q Going to unit 11? Where was it taken from?

When you were standing taking that picture, where were you?

A Right in front of this gentleman here (indicating).

Q You are saying it is going toward unit 11?

A Yes. This is unit 11 here in the left-hand corner up here (indicating).

These are homes in unit 11.

Q Do you know what unit you were in when you were actually taking that picture?

A I'd have to refer to my notes. It's just -- it's very near unit 11. I don't know what that is.

Q Can you refer to your notes, please?

THE COURT: Where are they?

THE WITNESS: I have them in my briefcase in the office.

THE COURT: Go and get them.

THE WITNESS: Okay.

(Pause.)

Q Are you able by referring to your notes, Mr. Sennett, to tell us where that picture was taken?

A Yes. I just referred to a map.

It is unit 13.

Q A map? Do you have the map with you?

A No.

Q What map did you just refer to?

A A big map I have in my briefcase.

Q Okay. Can you bring the map so we can all know what you are referring to?

A Well, you have a pretty big one here.

Q Can you identify it on that, which is Government's Exhibit 1075-A?

(Witness indicating.)

THE COURT: Keep your voice up. The reporter has to hear you.

A I believe that this is unit 13 right in here, this is unit 11 on this side (indicating).

Q So you are saying, then, it is east of unit11 on that map?

A Unit 11 would be east of unit 13, correct.

Q And HZ for identification, can you tell us where that picture was taken (handing)?

A Yes. That is Corrales Heights.

Q Looking in what direction?

A Directly west.

Q How about IA for identification?

THE COURT: Isn't there an identification on the back of the picture of what it represents?

THE WITNESS: Yes. It just says, "construction of new homes."

We didn't put the new directions.

MS. HYNES: Your Honor, with respect to the documents which I have just reviewed which I hand up to the court which basically deal with construction, I would object on grounds of relevancy and also cumulativeness of the scenes of construction that have already been in evidence in the defendants' film "Better Way of Living," and I make that same objection with respect to JE.

A This has nothing to do --

MS. HYNES: Excuse me, there is not a question pending.

THE COURT: You say the same objection?

The witness is saying it is not the same.

MS. HYNES: Okay.

Q With respect to JE, what is that?

A That is a company that builds houses.

Q Is that taken on the property?

A Yes. It is at Rio Rancho Industrial Park. That is a company, Western Homes. They make homes.

Q So these are --

A Those homes go all over New Mexico.

Q So these homes are constructed on the property and then removed to a different location?

A This is an industrial park.

Q Yes.

A They have big warehouses, they have a factor- and they make the homes in the rear, put them on the truck and they take them to a location.

MS. HYNES: I would object to that as well, your Honor.

THE COURT: Overruled.

(Continued on next page.)

Q Did you take pictures, Mr. Sennett, inside Felco Jewelry Company?

A Yes, I did.

Q And is Defendants Exhibit JF a picture of a working table with rings on it inside Felco Jewelry Company?

A Yes, it is.

MS. HYNES: Your Honor, I would object to that picture.

THE COURT: Objection overruled.

Q IX is a photograph.

Was that taken inside a building on the property?

A That's the Lovelace Medical Clinic.

Q And this is a portion of the inside of that building?

A Yes.

Q And is JC an inside shot of another building on the property?

A That is another firm. They make fountains for cities all over America.

Q And this is a photograph taken inside?

A Inside the factory, yes.

MS. HYNES: We would object to that, your

Honor.

THE COURT: Overruled.

MS. HYNES: Your Honor, I would ask the Court to examine JN, JH, JI, JJ, JK, JL, JM, JO and JP and JQ. We have objections to all of these photographs coming into evidence and ask to have a side bar.

THE COURT: Let us have a side bar.

(At the side bar)

THE COURT: What is the relevance of these pictures?

MS. CROSS: They show the community that exists at Rio Rancho and the intent of the defendants in good faith.

THE COURT: Objection sustained.

MS. CROSS: They have built libraries and churches.

It also goes against the argument that Ms. Hynes made in her opening statement that the community out there is merely a showcase --

MR. FLEMING: It is an allegation.

THE COURT: What?

MR. FLEMING: It is one of the allegations that the community out there is a fraud, Judge.

MS. HYNES: That is not an allegation, your

Honor. We have conceded in opening and conceded that we do not dispute that there is a community and we called people who are happy there and as your Honor has indicated before when we called witnesses on the cross examination by the defendants of Mr. Gusowsky, Mr. Mols, we brought out that they are happy, they are happy living there and that that is not the point.

The relevance of this escapes me. The fact that they have a Halloween party is not the issue in this case. The issue in this case is the sale of land for investment.

We have at all times stated that there is a community out there, that the people are happy living there and --

THE COURT: Ms. Cross said you made some reference in an opening which I don't recall that she says justifies putting those in.

MS. HYNES: Your Honor, quite the contrary.

MS CROSS: Here is, for example, a picture taken in the community center which AMREP provides for the residents. They are free.

They have provided land for --

THE COURT: That is in the testimony already

MS. CROSS: Yes.

THE COURT: And the churches are in the testimony already.

MS. CROSS: But this shows what it is that AMREP has helped to build.

THE COURT: Objection sustained.

MS. HYNES: Your Honor, there are similar pictures --

THE COURT: I sustain the objection. Why do you keep arguing for?

MS. HYNES: Because I am offering more pictures that I am objecting to.

THE COURT: I haven't seen them, so I can't look at them, can I?

MS. HYNES: That's why I am offering it.

For the record, it is IR, IS, IT, IU (handing).

THE COURT: R, S, T, U and Q -- is IQ supposed to show you can have horses?

MS. CROSS: No. It is a person that is riding one.

THE COURT: Objection sustained.

MS. HYNES: With respect to JB, JA and JD, your Honor, those are not on the property.

MS. CROSS: The bus stop is, certainly.

THE COURT: Objection sustained.

MS. HYNES: Your Honor, this is another picture which is not on the property that relates to the ones you just sustained an objection on.

THE COURT: This is the high school?

MS. CROSS: This is the high school that the students from Rio Rancho go to.

THE COURT: Objection sustained.

A high school is a high school is a high school as Mr. Stein once said, and the jury knows you have a high school. Mr. Arkin has brought that out seven times during cross examination.

MS. HYNES: Your Honor, with respect to the remaining photographs, they are cumulative. They show the golf course houses which we have in evidence through the other exhibits which the defendants --

THE COURT: Which you put in.

MS. HYNES: No, no, these are the defendants exhibits that they offered this morning.

THE COURT: I didn't see this this morning.

Pair them up with the ones that are in and show them to me in that fashion and I will rule on it.

MR. FLEMING: Judge, Paragraph 14 of the superseding indictment charges the defendants with,

"In order to create the false impression that they were gradually developing all of the 91,000 acres of Rio Rancho Estates as a 'master-planned community,' would and did install and caused to be installed, water and utility services and other customer amenities in small company owned'building areas'."

Your Honor, you will recall we argued this during the pretrial. They are alleging that the community out there is a sales inducement.

THE COURT: I don't believe that allegation is the basis for those pictures, Mr. Fleming.

MR. FLEMING: My point is these words, your Honor (indicating).

THE COURT: I understand that. In relation to what? Read the rest of the sentence.

(In open court)

THE COURT: Go ahead, you can do that during the afternoon recess.

MS. HYNES: Your Honor, I have specific objections to some of these other photographs.

THE COURT: What are they?

MS. HYNES: I object, your Honor, to HM for identification.

THE COURT: Overruled.

MS. HYNES: Your Honor, with respect to the government's objection oncumulation, do you want us to match up the other pictures?

THE COURT: That is right. Do it this afternoon and show them to me tomorrow morning.

MS. HYNES: Okay.

THE COURT: Do you have any more questions of this witness?

MS. HYNES: No, I do not, your Honor.

THE COURT: All right.

CONTINUED DIRECT EXAMINATION

BY MS. CROSS:

Q Mr. Sennett, are there mountains east of Albuquerque?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

Q Are there mountains to the east of Albuquerque, northeast of Albuquerque?

A Yes.

Q And did you go up on the mountains?

A Yes.

Q How did you get to the top?

A On an aerial tram.

MS. HYNES: Objection as beyond the --

THE COURT: What for? What is the basis of your objection?

MS. HYNES: I am sorry, I am getting confused, your Honor. I thought I was on cross examination.

THE COURT: Of course not. You were on voir dire. I tried to point that out to you several times, but you didn't listen.

MS. HYNES: I apologize.

THE COURT: Go ahead.

Q Did you take any photographs on the top of the mountains?

A Yes, we did. We took a series of photographs.

Q Showing you what has been marked as Defendants Exhibit JR for identification, do yo recognize that?

(Handing)

A Yes, I do.

Q You have to keep your voice up.

A Oh, I'm sorry.

Yes, I do.

Q And what is JR for identification?

A It is a panoramic view of Albuquerque and the surrounding area.

Q How many photographs was this made from?

A Four photographs.

Q Did you put them together?

A Yes, I did.

Q How did you put them together?

A First of all, we took the pictures from the top of the mountain photographing each quadrant of the area that we saw slightly overlapping them.

Then we took them out of their cardboard holders and matched up the exact location on each slide that bordered the other and cut them and then we assembled into a panoramic picture.

The picture was rephotographed to make the mural. It is a common panoramic technique.

Q Do you see Albuquerque here?

A Yes, I do.

Q Where is it?

A Here on the left side (indicating).

Q Do you see Rio Rancho?

A Yes, I do.

Q Where is it?

A Here on the right side (indicating).

Q Is that photograph a fair and accurate representation of what you see from the top of the mountain looking west?

A Yes, it is.

MS. CROSS: I ask to admit that in evidence.

VOIR DIRE EXAMINATION

XX

BY MS. HYNES:

Q Mr. Sennett, what time were these photographs taken?

A Right at sunset. I believe it was about 7:00 in the evening.

Q Can you point out on Government Exhibit 1075-A where you took this photo from?

A If that map shows the tram, I can probably find it.

(Pause)

A This is a very poor map.

Q Can you find the tram?

A I can't find the tram.

These are the mountains. I was standing on these mountains and I was able to see this entire part of Albuquerque (indicating).

That is the view you are seeing from right about there, that (indicating).

Q You said you took four quadrants.

A Correct. The first picture was made there, the second there, the second there -- the third, the fourth (indicating).

Q So when yousay four quadrants, you are starti from the east just going north?

A Right.

Q And that was taken from the tramway?

A From the restaurant right at the top.

Q At sunset?

A Yes.

MS. HYNES: Your Honor, I object to this on relevance.

THE COURT: Sustained.

MS. CROSS: Your Honor, may we have a side bar on that?

THE COURT: No.

The beauty of the view from the top of the tram has nothing to do with any issue in this case.

MS. CROSS: That is not the reason --

THE COURT: And that is all I can see at that picture.

MR. ARKIN: May we have a side bar for one minute?

THE COURT: No.

MS. CROSS: Perhaps I can clarify that, your Honor, the relevance of it.

CONTINUED DIRECT EXAMINATION

BY MS. CROSS:

Q The first picture that you took was which one, do you recall?

A (Indicating).

Q The one of Albuquerque?

A Correct.

Q And then the next one was the next one in that row?

A Right.

Q Were you facing -- which direction were you facing from the top of the tram?

A Directly east -- directly west.

Q And then you moved it sort of going south to going north?

A Correct.

Q In that order?

A Correct.

Q Does this photograph show the relationship of Albuquerque and Rio Rancho?

A Well, it does. Here is Rio Rancho and here is Albuquerque (indicating).

Q And does it show moving from the south to the northwest of the relationship of Albuquerque to Rio

A Yes, it does. The city spreads out toward Rio Rancho.

MS. CROSS: We would ask to admit it on that basis, your Honor.

THE COURT: No.

That is not the purport of that picture. It is the same reason I excluded the government's film the other day or a couple of weeks ago. It is a distortion and that is a distortion of what you are trying to show.

If you really wanted to show what happened, take it at high noon, not on the beautiful sunset with the light showing.

MS. CROSS: But you can't see it.

THE COURT: I am very sorry. That picture is excluded for the purpose for which you offer it.

MR. FLEMING: Judge, can we speak to that?

THE COURT: No. It is perfectly obvious that that picture is taken for an emotional impact.

MR. FLEMING: No, your Honor --

THE COURT: That's the way it hits me, Mr. Fleming, and that's the way I am ruling.

MR. FLEMING: I understand that, your Honor, but I want to speak to it.

THE COURT: You have offered it and I have ruled it out.

MR. FLEMING: May we reserve the right to speak to it subsequently?

THE COURT: No, you don't have to. I have ruled on it.

MS. CROSS: Your Honor, we have one taken at a later time without the sunset.

THE COURT: Look, you have a perfect picture there which you allowed in in 1973 showing the growth and the relationship taken on top.

A picture taken obliquely from a distance does not give the right perspective.

I have excluded it.

Next question.

MS. CROSS: This has been marked as Defendants Exhibit JS.

Q Can you identify this (handing)?

A Yes, I can.

Q And what is that?

A It's a picture of Albuquerque and environs.

Q And was this taken the same evening as the other one?

A Yes, it was.

Q Was it taken earlier or later than the other one?

A Much later.

Q And does it also show Albuquerque?

A Yes, it does.

Q Can you see Rio Rancho in the picture?

A Yes, I can.

MS. CROSS: We would offer this, also, your Honor.

MS. HYNES: The same objection.

THE COURT: The same ruling.

MS. CROSS: No further questions.

MS. HYNES: I have no cross at this time.

THE COURT: All right, you may step down.

(Witness excused)

THE COURT: Next witness.

T6A

MDjw 1

MR. ARISOHN: The defense calls John Kearney.

JOHN B. KEARNEY, called as a witness by the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

XX

BY MR. ARISOHN:

Q Mr. Kearney, how old are you?

A Sixty-three.

Q Where do you live?

A 1509 Randy Boulevard, Rio Rancho.

Q Rio Rancho, New Mexico?

A That's correct.

Q How long have you lived there?

A About ten years.

Q Do you own the house you live in?

A That's correct.

Q Have you owned it for ten years?

A Yes, sir.

Q Where did you live prior to that?

A In Centerport, Long Island, New York.

Q How long did you live in Centerport, Long Island?

A About sixteen years.

Q Prior to that where did you live?

A Jackson Heights, Queens.

Q Are you married, sir?

A Divorced.

Q Do you have any children?

A One boy.

Q How old is your son?

A Twenty-five years of age.

Q Are you currently employed?

A Yes, sir.

Q What is your employment?

A I work for the State of New Mexico, Health and Social Services Department, Licensing Section, as supervisor.

Q Are you currently employed in another capacity?

A I am a volunteer fire chief in Rio Rancho.

Q When you were living in Centerport what was your employment?

A I was a fire instructor under the County Vocational Educational System teaching firemen every night, and I also worked during the day as a special police officer for the town of Huntington.

Q Prior to that, were you a fireman?

A I was a fireman in the State of New York for twenty years, 1937 to 1957.

Q Mr. Kearney, when did you first hear of Rio Rancho?

A Oh, around January 1962.

Q Can youtell the Court and jury what the circumstances were of your first hearing of Rio Rancho?

A I first heard it from two of the other fire instructors in Suffolk County, who went to Memphis, Tennessee, on a one-week training session for fire instructors.

While they were there they were discussing retirement --

MS. HYNES: Objection.

THE COURT: Yes, we are not interested in that, Mr. Arisohn. The conversation he had with his two friends who went to get some instruction in Memphis, Tennessee, has nothing to do with this case.

Q Did you hear about Rio Rancho from these friends of yours?

A That's correct. Two instructors.

Q Did you subsequently make an inquiry as a result of what they told you?

A I did. I called Rot Realty in Hempstead, New York, and asked for some literature and a contract on the purchase of property for Rio Rancho.

Q By the way, do you know if any of your friends had bought land at Rio Rancho?

A They did. They had about ten acres between them. At a visit to Rio Rancho they bought it.

MS.HYNES: Objection, your Honor.

THE COURT: Overruled.

Q Did Mr. Roth send you the advertising literature and contract you requested?

A He did.

Q Did you read the literature?

A I did, yes, sir.

Q Did you sign a contract?

A I did for a half acre.

Q Do you recall how much you paid for the half acre?

A $795.

Q By the way, what year was this?

A Oh, around March 1962.

Q Do you recall what terms you had to pay out to $795?

A I believe I paid ten and $20 a month, paid it off monthly.

Q Did you subsequently pay it all off?

A Yes, sir.

Q Did you get a deed for thelot?

A I have it, sir, back in New Mexico.

Q Do you still own that lot today?

A I do, sir.

Q By the way, when you bought that lot did you know whether that lot was developed or undeveloped?

A I knew it was undeveloped area.

Q When you bought that lot did you know you had a right to cancel the contract?

MS. HYNES: Objection. This is leading.

THE COURT: Sustained.

Ask him what the terms of the contract were.

Q As far as you can recall, Mr. Kearney, what were the terms of the contract?

A Pay it off monthly. Number two, that I could exchange that property for property in a developed area.

Q Did you ever take advantage of that exchange privilege?

A No, sir.

Q Did you ever visit Rio Rancho?

A I visited in late '62 and early '63.

Q Can you tell the Court and jury the purpose of your visit?

A Number one, it was a vacation, to get away from the humdrum of working here, and then besides that to see what the area looked like for future possibility of moving there.

Q Did you see your property in Unit 2?

A Yes, sir, I sure did.

Q When you saw your property did you see what you expected to see?

MS. HYNES: Objection.

THE COURT: Overruled.

Q You can answer.

A Well, I saw literature on it before, and I knew it was just sort of grass land, and that's what it was when I got it. Grass two foot high.

Q It wasn't desert, was it?

A No. Desert is dry.

Q Did you visit Rio Rancho again in 1965?

A Yes, sir, three times in '65.

Q Tell the jury what happened the first time.

A The first time around January or February 1965 I just went there for an ordinary visit to see how she developed during the previous three years, and then in April I went back again, and I bought additional property.

I bought an acre in Unit 6, and I figured this would be good for my children, my children and my grandchildren in the future.

Q When you bought the acre in Unit 6, that totaled up to be one and a half acres that you owned?

A That's correct.

Q And you knew -- well, did you know how much of that one and a half acres you could use to exchange?

MS. HYNES: Can we fix a time?

Q At the time you bought the one acre in 1965.

A I was only using the idea of the half acre out in Unit 2 when my son come out to let him build on that.

THE COURT: That isn't the question, is it?

MR. ARISOHN: Yes, I think it was, your Honor.

May I have the question read back?

THE COURT: No, it is up to you. If you are satisfied, go right ahead.

Q You testified that you visited Rio Rancho three times in 1965. What happened on the second and third time, do you recall?

A The second time I bought that acre out in

Unit 6. The third time was a result of being invited to a class at New Mexico State University. And when I finished there I went up to Rio Rancho to discuss the establishment of the new fire department there. That was in August 1965.

Q Did you visit Rio Rancho again in 1966?

A Three times again in 1966, yes, sir.

Q Why did you do that?

A I was getting pretty close to moving out there, and I wanted to see how things were coming along. And then finally in December, the third visit in 1966, I came across some property, there was a house already developed on it, and I put a down payment on it, and then come back in 1967 and purchased it.

Q Was it a house already built, Mr. Kearney?

A That's correct.

Q Did you utilize your exchange privilege to buy that house?

A No, sir. Under the circumstances, number one, I bought it froma private individual, a widow whose husband died before he moved into it, and, secondly, I didn't feel that I wanted to do that anyway.

Q How much did youpay for that house?

A $19,500.

Q How much land do you have with that house?

A .56 acres.

Q How many rooms do you have in that house?

A Seven.

Q How many bedrooms do you have?

A Three.

Q You said you paid $19,500 for it, that was in 1967?

A That's correct.

Q Do you know how much that house is worth today?

A Two years ago it was worth $40,000.

Q How do you know that?

A I filed for divorce two years ago, and my ex-wife's attorney had the house appraised for splitting up the assets of the family.

Q By the way, in your capacity as fire chief of Rio Rancho, do you keep records of the number of houses built in Rio Rancho?

A We are required under state law to maintain a correct and accurate copy of the residency in the area for emergency purposes.

Q Do you know what number house yours was in terms of number of houses built at Rio Rancho from its inception?

7

A Let me see --

MS.HYNES: Objection. The witness has testified he has to keep records on residences.

THE COURT: What's your objection?

MS. HYNES: People who live there.

THE COURT: He didn't say residents. He said residences. That's a building, not an individual.

Q You may answer, Mr. Kearney.

A My home was 145th home built there.

Q Do you know how many single family homes there are there today?

A Between 1800 and 1900.

Q And you are still living in that house, sir?

A Yes, sir.

Q Did there ever come a time, Mr. Kearney, when you attended a Rio Rancho sales dinner party?

A Yes, sir.

Q When was that?

A About 1969, I believe. Somewheres around there.

Q Where was that?

A That was in Huntington, Long Island.

Q How did you come to attend a dinner party?

A I come back here for a visit, and while I was in Long Island a couple of friends of mind had tickets, they were invited, and they couldn't make it to the dinner, so they gave the tickets to me and I went to the dinner in Huntington House, I believe they called it at that time.

Q Do you know the name of the company which ran the dinner?

A That was the company I purchased my property from, Roth Realty, in Hempstead.

Q Would you tell his Honor and the jury what occurred at the dinner?

A After we had roast beef I guess it was or something like that they showed some films of Rio Rancho and Albuquerque, New Mexico, and later on a salesman sat around the table and discussed the purchase of property in that area.

Of course, I didn't say anything about being a resident there until the fellow sat down and showed us some developed plans and undeveloped plans of the area, and I told him, "Well, I live right there on that corner" so he was --

Q When you say developed plans, let me ask you, did the salesman at the table speak about what portions of Rio Rancho were developed?

MS. HYNES: Objection.

A Yes, they did. The film itself was developed out there, or take out there, and they showed both the residential area and the vacant land.

Q At your table, Mr. Kearney, were there official-looking property reports available about the property?

A There were pamphlets and literature on the property, yes.

Q On the table, sir?

A On the table, yes. I am sorry, of the property on the table.

Q Were they available to be taken?

A Yes.

Q Did you take one?

A I took one, and I also took a single sheet on the development of the area. I think there was one page told how many houses were there, and how many paved streets and how many water mains or fire hydrants, or something like that, and I picked it up.

Q At the time you went to this dinner party, for how long had you been living at Rio Rancho?

A Two and a half, nearly three years.

Q Was there anything you heard at that dinner party which you thought was in the slightest bit misleading?

MS. HYNES: Objection, your Honor. Leading.

THE COURT: Overruled. How else is he going to do it? This man lived there. He is being asked whether anything he heard at the dinner party was misleading from what he knew. That is not a leading question.

A No, sir, I didn't feel that at that dinner the expressions made regarding Rio Rancho was in any way misleading.

Q Did you hear anything which was in the slightest bit untrue?

A No, sir.

Q Did any salesman you saw use any high pressure sales tactics to get people to buy Rio Rancho land?

MS. HYNES: Objection. It calls for a conclusion.

THE COURT: Overruled.

A No, sir. The only thing I didn't understand was the salesmen at the beginning when they stook up and said "Hold Section 3, or Unit 3, Section 60," or something like that, and then after a while I found out that somebody was interested.

MS. HYNES: Objection.

Q What did you think the "hold" meant, sir?

A It meant that somebody was interested in that piece of property and they didn't want to have any conflicting with other purchasers.

Q Did you think that piece of property had been sold?

A No, no.

Q Did anybody at that dinner party say that buying Rio Rancho land was a good way to make a lot of money quickly?

A No, sir.

Q What do you plea to do with your acre and a half at Rio Rancho?

A Well, my son is moving out probably in February, and I intend to use the half acre as down payment for a house for him, part of it for the property, and the other acre is to keep for my grandson.

Q For what purpose, sir?

A He can use it later on.

Q For what purpose, sir?

A Well, to build, to move in half acre in a developed area, if he wants to. That's what it is there for.

Q You are holding it for your grandson for any other purpose?

A If he doesn't want it he probably could sell it later on. As the area develops naturally pricing up as I found out myself with my own home.

Q You testified earlier you were the fire chief of the volunteer fire department at Rio Rancho.

For how long have you been the fire chief?

A Ten years.

Q How many firemen are volunteer firemen at Rio Rancho Fire Department?

A My maximum number was 74. Now I have 54.

Q In your capacity as fire chief, you have witnesses any aid that Rio Rancho is taking, and AMREP Corporation, have given to the fire department?

A Yes. From my records in 1965 AMREP built a single bay garage for the housing of fire equipment one engine which AMREP at that time, Rio Rancho Estates, Incorporated, purchased for about $3800. That was in 1965.

And then in 1967 I had occasion to --

Q Excuse me one second.

In 1965, you said the building was built?

A That's right.

Q And was the building built on land?

A Oh, yes, that's right. A quarter acre was turned over to the county. Out there they have a set up that all fire property, apparatus, land, belongs to the county.

So Rio Rancho Estates turned over a quarter acre to the county and then they put the building up on that quarter acre.

Q You were going to testify about 1967.

A Then in 1967 the community was growing and we figured that the fire defense must keep up with the increase in population, so we sat down and we developed a specification for a new fire pumper, and of course it went out for bids and so on, and I found out that a down payment for this fire truck which eventually would cost $27,007, we were $1,007 short on our down payment, so I contacted Rio Rancho vice-president at that time, and asked him about helping us out, and we did receive a check for $1,007 to go to $6,000 that we had on land as a down payment for that truck in 1967.

Q Was an extension on the building put on in 1967, also?

A That's right. We kept the old truck, therefore we requested AMREP, or Rio Rancho at that time, to put an extension on the building, and they put another bay right on the quarter acre for it and we housed the new truck there.

Q Did the company pay for that extension?

A Yes, sir.

Q Did the company also give any aid in 1970?

A In 1970, around July, I came to New York here and while I was here -- oh, pardon me, prior to that, back in Rio Rancho, we decided,that is the firemen decided we have to get some kind of emergency medical service set up for the community. It was a -- let's see, probably 4500 people or 5,000 people there at the time, and a number of them wereelderly, and they needed medical care, immediate emergency service.

Hospitals were 17 to 25 miles away. So we decided on getting an ambulance service there with our own firemen as the attendants, with proper training.

Of course, to set that up it cost money, so I went to Mr. John Sommerholder, who I believe was a vice-president at that time, and asked him for $1500 to start this emergency medical service in the community.

Of course, he told me that he had to contact New York office about it. Well, over a period of a couple of weeks I wound up in New York myself for my mother's funeral, and before I went back to the airport to fly back to Albuquerque I had called AMREP's office here, I think it was 60th or 61st Street, and asked them if I could come up and see them, and I believe it was a fellow by the name of Friedman, Howard Friedman, and he asked me why, why did I want the appointment.

So I told him, I says, "I would like to get some money to set up this emergency medical service back at Rio Rancho."

Then he asked me how much, and I said $1500, so he said, "Okay, when you get back, you see Mr. Sommerholder, and there will be a check there for you," and of course I went back a couple of days later and sure enough there was a check and that started us off in August 1970 on our way to rendering emergency medical services in the community.

Q By the way, Mr. Kearney, who supplies the gasoline for the fire trucks at Rio Rancho?

A For the past two years Rio Rancho Estates, Inc., has purchased an offering of about 800 gallons a year for us, for maintenance of our trucks.

Q Other than the fire department, Mr. Kearney, are you active in any other organizations at Rio Rancho?

A Since about 1970, I was president of the Catholic Church Council. We had no churches then. Rio Rancho was letting us use the recreational hall on Sunday for services. About 1973, or early 1974, we decided to build, after we had saved money for about three or four years, and we went to AMREP Corporation, or Rio Rancho out there, and asked them if they could donate some property to us, because I had heard that this was the practice.

MS. HYNES: Objection on what he had heard.

THE COURT: Sustained. Strike what the witness said he heard.

Q Don't testify as to what was heard.

A Okay. Anyway I wound up with two and a half acres donoated by AMREP Corporation to the Catholic Church out there, the mission at that time. Right now we are an established parish, St. Thomas Acquinas parish.

Q How many members does your parish have, sir?

A Right now we have about 450.

Q How many members did it have when you first started?

A Probably 185, 200.

Q Of the 450 people who are members today, how many of them are Rio Rancho residents?

A I would say over 400.

Q Mr. Kearney, you have been out to Rio Rancho for the first time in 1963, you testified?

A That's correct.

Q You went out three times in 1965?

A Yes.

Q Additional times in 1966?

A Yes, sir.

Q And you have lived there since 1967?

A That's right.

Q Will you describe for his Honor and the jury the growth and development of Rio Rancho which has taken place in the 13 to 14 years since you first saw Rio Rancho?

A When I first saw Rio Rancho in 1963, oh, I'd say there was only about seven or eight homes there, dirt roads, and over the years as I went back and was residing there there has been a great development in the community in regard to the number of homes that were built, the commercial area, stores, shopping centers, theatres, churches.

We have probably five or six churches there now. So this development over those years has made me attached to the community, not just the fire department but other areas, the civic associations, and so on, the community associations, and there has been a tremendous increase in residents moving in.

Back in the mid '60's they were coming in about one a month. Of course, the last year and a half or two years it slowed down a bit, but last month I think we had something like 26 move in.

MR. ARKIN: No further questions, your Honor.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MS. HYNES:

Q Mr. Kearney, my name is Patricia Hynes. I represent the government in this case.

You first bought a half acre of land in unit 2 from Roth Realty, you said, back in 1963?

A 1962, ma'am.

Q And you said that you yourself called Roth Realty and asked them to send you some literature?

A That's right, ma'am.

Q Let me show you what's been marked 140-G in evidence, which has a copyright of 1961.

Do you recognize whether you received this pamphlet from Roth Realty?

A No, I think I received literature that was on eight and a half by eleven. I am not sure, but I am pretty sure it was eight and a half by eleven.

Q When you contacted Roth Realty, you were interested in moving to Rio Rancho, is that correct?

A No, ma'am. When I bought that property, I was just interested in purchasing property.

Q I see.

A I didn't have my mind made up then.

Q You didn't know at the time you bought --

A That I was going to move, no. It was just an investment on my part.

Q And you bought property in unit 2, is that correct?

A That's correct, ma'am.

Q We have a mosaic up here that includes Rio Rancho. Can you point out where unit 2 is on this mosaic which is 1075-A in evidence?

A It's up in the southwest corner of the property.

Q This is going west and this is the south border of Rio Rancho?

A It's in the southwest corner.

THE COURT: That would be the northwest, Mr. Kearney.

THE WITNESS: I can't see too good. I had a corneal transplant.

THE COURT: Anyway, it was the southwest corner.

THE WITNESS: That's right. You had section 1 and 2.

Q And you said that you visited that piece of property in unit 2 when you went out there in the early '60's, is that correct?

A '63, yes, ma'am.

Q In '63?

A Yes.

Q And you said that the property you visited, your property in unit 2, was graze land, grazing land?

A The whole area was -- well, we call it graze. It was about a foot high.

Q Have you visited your property in unit 2 in the last year?

A No, ma'am.

Q When was the last time you visited your property in unit 2?

A Probably around 1965.

Q And was graze land then?

A Well, they call it graze land, yes.

Q And you call it graze land?

A I call it graze land, yes.

Q And as best you know your property today in unit 2 is still graze land?

A Still the same, yes, ma'am.

Q Then you testified that you bought another acre, this one in unit 6, is that correct?

A Yes.

Q Where is unit 6 in relation to the developed part of Rio Rancho?

A That's about the middle of Rio Rancho properties towards the south. That would be sort of -- 1, 2 and 3 would be on the south part. 4, 5 and 6 are next. It's the middle one.

Q Do you know how many miles that was from the house, unit 6?

A Unit 1 is about 13 miles west. 2 would be about 10 miles west. 6 would be about the same, about 10 miles west.

Q About 10 miles west?

A Yes. About that.

Q Did you visit your property, the acreage you bought in unit 6 at any time?

A In selecting the unit 6 we visited about five or six different pieces, picking it out. My wife was with me at the time.

Q When you bought unit 6, you actually went out and saw what you were buying?

A Yes. Five or six different pieces that same day.

Q And you selected the piece you wanted?

A Yes.

Q And the acre you bought in unit 6, was that grazing land as well?

A It had the same type of greenage on it, yes.

Q And that was similar to the property you bought in unit 2?

A A little better. It was on a knoll.

Q A little higher?

A Yes, that's right.

Q And is the property that you bought in unit 6, that one acre, is that still grazing land today?

A I haven't been out there since 1965.

I am going to assume something, because we had an airline crash out there, and we had to chase the cattle out of the way to get to the plane, so I would assume it's still being used.

Q Are there any houses out there?

A No.

Q That you are sure of?

A The nearest one to us is 7, which is the next one closer to me. Unit 7, there are some homes there. Four homes as far as I know now.

Q You have had responsibilities in connection with the fire department over the last ten years, is that correct?

A In Rio Rancho, yes.

Q When were the first homes put up in unit 7?

A I would say about two years ago two homes were put up.

Q Two homes?

A Two homes.

Q Were those homes occupied?

A As far as I know, yes. A personal friend of mine bought one of them himself.

Q When did he buy that?

Q About a year and a half ago or something like that now.

Q And were you aware, as someone who had responsibilities for fire protection in the community, that there were homes, two homes built in unit 7 as far back as 1971 that had not been sold and were not occupied?

A That's right. Yes.

Q And those two homes in unit 7 were not occupied for several years?

A That's right. Yes, ma'am.

Q In fact, that the two homes in unit 7 remained unoccupied until the last year, is that correct?

A I figure about a year and a half, yes.

Q A year and a half?

A Yes.

Q And do you know the reason why they remained unoccupied?

A I have no idea, ma'am.

Q Did you have any occasion to travel out to unit 7 and look at those two unoccupied homes?

A Last time I saw them was all the windows was broken. That's about two years ago. I went out there to check the fire hydrant burst there.

Q There was a fire hydrant placed there?

A Yes.

Q When the two homes were put up un unit 7, were you aware it was the exchange area?

A I wasn't involved in that.

Q How far were the two homes in unit 7 from unit 16?

A A mile, a mile and a quarter.

Q Unit 7 --

A I am thinking of unit 11.

Q Unit 7.

A From 16?

Q From the houses in unit 16.

A What's that?

Q From the houses in unit 16.

A The houses in 16, probably five and a half miles or six miles. Something like that. I never clocked that.

Q And that's five and a half miles -- the roads leading up to unit 7 where those two houses were unoccupied for three years, those were dirt roads, correct?

A Partly dirt. Southern Boulevard. The way the fire trucks would go, would go out Southern Boulevard.

Q This jury doesn't know where Southern Boulevard is. Why don't you explain to them where Southern Boulevard is?

A Well, let's see now. Southern Boulevard would be the center of unit 16.

Q Where the houses are?

A That's right.

Q There is other land in unit 16 where there are not houses?

A That's right. The west part of unit 16 south of Sarah. Sarah and Southern come together at a point, and then it becomes Southern out.

Now, Southern runs from the east side to the west side of Rio Rancho right through. It's paved road for probably two, two and a half miles, and the rest is heavy surface, rolled surface.

Q Othern than Southern Boulevard, you can't get to unit 7 by just traveling along Southern Boulevard, is that correct, you have to --

A No, you have go to west on Southern Boulevard and turn right on Rainbow.

Q Is Rainbow paved?

A No.

Q And when you turn right on Rainbow, and then head up toward unit 7, how many miles when you make the turn off Southern until you get up to unit 7 are there?

A You got me on that. I only rode there once, and I never clocked it. I would say probably a mile, ten city blocks. And that's dirt. It's not dirt --

Q This is to unit 7?

A Yes, to 7. You go out Southern Boulevard and then turn right on Rainbow, and I would assume it's a mile north on Rainbow.

Q And that's five miles from the developed portion of unit 16?

A The developed area, that's right, yes.

Q how many homes are there in unit 7 today?

A Four that I know of, and one under construction.

Q And do you know whether those homes are occupied?

A I know two are occupied. I haven't been out there to check on the other two lately.

Q You mentioned in connection with your duties and responsibilities with respect to fire protection in the community that you maintain records with respect to the number of residences that are constructed. Is that correct?

A Structures.

Q Could you describe how you keep those records? What are they?

A I keep three sets of indexes, one alphabetical, one numerical, and one by street address, streets. And we get these records from Rio Rancho. We used to get them once a month they send me a roster and I would check them every month to see I had cards in there because sometimes people call up and say this is Mrs. Garcia, I have a fire, and the first thing you know they hang the phone up, or hurry, my husband dropped to the floor, and give the name and hang up.

We check through the index file and I can announce over the radio to the firemen where it is and who it is.

Q I am interested and I will focus my questions on the recordkeeping with respect to the number of residences, not the names of the residences.

With respect to the number of residences, is it a fair statement that in 1969 approximately 105 single-family houses were built at Rio Rancho?

A No.

Q To the best of your recollection?

A No, because my house was the 145th, and that was completed in August, 1966.

Q What I mean is the year 1969, were there in that year 105 houses built?

A I never kept track of the number developed by year. I just keep the total.

Q I see. So you just update the total from time to time?

A That's right, myself, yes.

Q And do you personally keep those records?

A I have them in my home.

Q And when did you first start keeping the records?

A July, 1967.

Q And you have kept them up to date?

A I hope so.

Q You mentioned that you bought your additional acre in unit 6 for your son and your grandchild?

A That's right.

Q You bought the acre in unit 6 in what, April, 1965?

A April, 1965.

Q How old was your grandchild then?

A I didn't have a grandchild.

Q But you did --

A I bought it for my son and future children.

Q So you bought it for your son at that time?

THE COURT: He had faith in his son.

Q And your son, in fact, did have a child, is that correct?

A Yes, ma'am.

Q And does he have more than one child or just one?

A Just the one so far.

Q How old is your grandchild today?

A Four.

Q Now, when you moved to Rio Rancho you bought a house? You didn't use your exchange right on unit 2 property, correct?

A That's correct.

Q And you said that you were saving your unit 2 property for your son could use it to build on, correct?

A Yes, ma'am.

(Continued on next page.)

Q And then your unit 6 property was for your grandchild?

A Well, him and his father. if he did have a he or a she. I didn't know.

Q And your grandchild is four years old today and your testimony was that the unit 6 property was for your grandchild to either build on or if your grandchild wanted to resell it?

A That's right.

Q You testified that you attended a dinner in 1969 in Huntington, is that correct?

A That's correct, yes, ma'am.

Q And approximately when in 1969 did you attend that dinner?

A I had the feeling around September.

Q September of 1969?

A Yes, ma'am.

Q And did you see -- you testified there were various pieces of promotional literature there, is that correct?

A That's right, yes, ma'am.

Q Did you see at that dinner what has been marked Government's Exhibit 388 in evidence, a pamphlet entitled "This is My Land"?

A Gee, I don't remember, but they had something like this, a pamphlet like this. I have a copy home yet.

But I'm not sure whether this is the exact type or not.

It was somewhat on the style of this.

Q Let me show you -- and you testified, I believe, that you listened to a speaker's presentation that night?

A Yes.

Q Referring you to pages 8 and 9, does that refresh your recollection as to whether you saw that pamphlet at that dinner?

A Now you got me on that, but I tell you, I saw you passed something here. It was some pictures like this. Let me see if I can --

MS. HYNES: Let the record reflect that the witness is referring to page 11 of that pamphlet.

Q Let me direct your attention to the map that appears on pages 8 and 9 of that pamphlet.

Do you recall seeing that that evening at the dinner?

A Gee, I don't remember.

Q You don't remember?

A I don't remember, no.

Q Do you remember Mr. Arisohn asking if you saw any official looking reports at the dinner?

A I -- yes, I remember that question, yes.

Q And your answer is that you did?

A I did. I saw something about the number of residents there, the number of homes under construction, something about water supply.

Q Was that a fact sheet that you testified to?

A Yes, an eight and a half by eleven sheet.

Q And that was a single piece of paper?

A I think so, yes.

Q That was what you saw on the table?

A That was one. There was a booklet like this, but I don't remember it.

Q Let me show you Government's Exhibit 146-S, which is an offering statement dated April 28, 1969 (handing).

Do you recall seeing that or don't you? Can you answer that yes or no, please?

A No, I don't -- I don't remember what the literature was, because, to be truthful with you, I wasn't interested in buying any property, I was there for the --

Q I am trying to just get at Mr. Arisohn's question, then, that, in fact, you don't have a recollection as to whether you saw that report which is 146.

A I don't know, no, ma'am.

Q You don't know?

A No.

Q You testified that you went to people from AMREP and Rio Rancho in connection with needs that the fire department had, the voluntary fire department?

A That's right, ma'am.

Q And you testified that on one occasion you were about $1,000 short of a down payment on a truck that you wanted to buy?

A Yes, ma'am.

Q How did you raise funds for the voluntary fire department?

A Number one, the ladies auxiliary have bingo games twice a month and at least twice a year they turn over checks of $1,000 -- $500 or $1,000 to the fire department, and that money was put in certificates of deposit and held until we needed it for a new truck.

The other was that July the 1st each year we have a fund drive. We mail out letters to the residents there explaining our activities for the previous year and requesting their help in keeping the fire department, maintaining the fire department.

Q Does the fire department try to be self-maintaining, tries to be self-supporting through its various fund raising activities, is that correct?

A Well, we try. We try to, yes, ma'am.

We do get -- at that time we were getting something like -- let me see -- oh, probably 15, $1800 a year from the state and that is for utilities and telephone and so on like that.

(Continued on next page.)

Q And do you get any contributions from the county, from Sandoval County?

A One year we did, one year.

Q Do you make any applications to Sandoval County?

A Yes. Every year that I put the budget in, I request them to give us $1500, and one year we got it, but since then we haven't got it.

Q What was the reason for not getting it?

A They said they didn't have the money.

Q Did you, when you bought your house in 1965 --

A 1967.

Q 1967, sorry.

Did you pay cash or did you have a mortgage on it?

A Financed mortgage.

Q Financed it?

A Yes, ma'am.

Q And is one of the requirements for banks as far as you know in financing houses that it have -- these houses have no fire protection?

A I never heard of it.

Q You didn't know that?

A No, ma'am.

Q Now, you testified that at one time you were back in New York and that you called the AMREP offices, is that correct?

A That's correct, myself.

Q Who did you speak to on the phone?

A I assumed it was a Mr. Howard Friedman.

Q Well, what do you mean you assumed?

A Well, I asked for the person in charge, and I'm pretty sure I heard the word Friedman when they answered the phone, "This is Mr. So and So Friedman," and he --

Q I'm sorry.

A I called from a telephone booth in the street here to make an appointment.

Q Okay.

You called and you asked to speak to the person in charge and whoever answered on the other end said that that was Mr. Howard Friedman?

A That's what I assumed, yes.

Q And Mr. Howard Friedman, do you know at that time, was president of the AMREP Corporation?

A I'm pretty sure that I did, yes, ma'am.

Q Is it your best recollection that then Mr. Howard Friedman then got on the phone with you?

A Yes, ma'am. Yes, ma'am.

Q And did he identify himself as Howard Friedman?

A I'm pretty sure that he did.

Q And can you tell us how long that conversation lasted?

A Oh, just a few minutes.

Q And you say that after the telephone conversation, Mr Friedman assured you that you would have the assistance that you needed?

A That's correct, Miss.

Q I take it from your testimony here today, Mr. Kearney, that you are an active resident in community activities as well as your activities in the fire department, is that correct?

A I'm trying to be.

Q And you are familiar with the community that exists at Rio Rancho Estates?

A Yes, ma'am. I followed it pretty closely.

Q And over the years you have been familiar with the residents at Rio Rancho Estates given your activities in connection with civic services and also in the fire department?

A Pretty close up until the last few years. It's gotten so large I can't keep track of them all.

Q And is it a fair statement that the residents, the people that live at Rio Rancho Estates are people who have moved from other parts of the country and have relocated at Rio Rancho?

A That's correct.

Q And that these people are people who bought property at Rio Rancho and then relocated to Rio Rancho?

A That would be hard for me to say, because I know some of them just stopped in and bought homes there without owning property before.

Q And these were people who were visiting the Albuquerque area?

A That's right.

Q And visiting Rio Rancho?

A Through friends and so on they heard about the area, the same as I did, and went there to see it, to look at it.

Q But to the best of your knowledge, the residents, the people who actually live at Rio Rancho, are people who either owned property and bought it at a sales dinner or some other way and moved or people who stopped by visiting Albuquerque or Rio Rancho and then relocated from other parts of the country?

A That's correct, Miss.

THE COURT: Do you have much more, Ms. Hynes?

MS. HYNES: Yes, your Honor, I do. I have about --

THE COURT: We will have to adjourn, then, until tomorrow morning at 10:00 o'clock.

I should tell the members of the jury that in view of the fact that you have been sitting on this trial for more than thirty days that your per diem salary will be increased from $20 a day to $25 a day in your next check.

See you tomorrow morning at 10:00 o'clcok.

(Jury left the courtroom)

MS. HYNES: Your Honor, we have an application.

THE COURT: Not now; tomorrow morning.

(Adjournment taken to January 4, 1977 at 10:00 o'clock a.m.)

end t

end day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Dick Kent	6113	6131	6138	6139
Tomas William Sennett	6140			
John B. Kearney	6168	6188		

EXHIBIT INDEX

Government	Identification	In Evidence
1552		6083
179-A	6087	
2000	6122	6133
Defendant		
FT & FU through HA		6126
HB,HC,HD,HE		6131

tla.am

gtjb

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 4, 1977
10:00 a.m.

(In open court in the absence of the jury.)

THE COURT: You have an application, Ms. Hynes?

MS. CROSS: A couple of matters we wanted to take up.

We have lists of documents for three of the experts that we have, which I will turn over to the government.

We were unable to reach Mr. Yguado, so the list is based on our best recollection of the last discussion we had with him a week or so ago.

One man, Mr. Flatou --

THE COURT: Do you want to have these marked for any reason?

MS. CROSS: I don't know that it is necessary.

THE COURT: Give it to Ms. Hynes.

MS. CROSS: Mr. Flatou we spoke to yesterday, and he told us that he no longer had his documents, but as the government served a subpoena on him last week, he boxed them all up and mailed them to the government.

He definitely needs those documents and we would request that when they come in the government notify us so that he can use them.

There is some question in my mind about the propriety of serving a subpoena on him for all the documents. Many of them are not Xeroxable. They are maps, photographs and that type of thing.

THE COURT: Do you have them, Ms. Hynes?

MS. HYNES: No, I don't, your Honor.

MS. CROSS: They haven't reached her apparently yet.

THE COURT: When they get here turn them back.

MS. CROSS: Then we can make some kind of list for Mr. Flatou.

A second matter which I wanted to bring up with your Honor is a subpoena that the government served on the company requesting the fiche of the witnesses that we intend to call.

We have provided the government with the fiche that the company keeps in their records.

The government, however, requested in the subpoena hard copies of the fiche, if any are available.

The only hard copies of the fiche that we have the lawyers have.

We have provided to the government what the company has, which is, we think, the only thing that the government can subpoena. I raise that as an issue, because the government has been -- there has been some dispute back and forth over that.

THE COURT: That is all the company has, that's all you get.

MS. HYNES: Your Honor, in dealing with a count person, for example, Mr. Kearney, we have Mr. Kearney's microfiche last night. There are specific documents we want to refer to.

If Ms. Cross told me last night that they only had one copy I -- throughout the trial there have been two copies the lawyers have had -- we would be happy to pay for it making a copy for us.

But in dealing with a copy to show the witness -- today I am going to have to ask Mr. Kearney to step down and look at a microfiche which can't be marked into the record.

What we are asking is simply to have Xeroxes made for it, we will pay for the Xeroxing so we can deal with hard copies.

THE COURT: How do you want to handle it, Ms. Cross? They said they will pay for it.

MS. CROSS: It is somewhat of a logistics problem, because we have hard copies of fiche in various places in the files. Some of it has been marked or written on. It is scattered throughout.

Some witnesses have very, very extensive fiche. It would probably take someone more than a day to Xerox the fiche, first of all, to collate and put it back together again and Xerox it.

THE COURT: You have me at a loss.

We are not talking about what you have in your files for your use, we are talking about what is in the company's files.

MS. CROSS: What is in the company's files is the microfiche which I have turned over to Ms. Hynes and she can have the copies made.

THE COURT: You are going to have to turn it over before that.

MS. CROSS: All right.

THE COURT: So they can have it available to cross examine the witness.

Okay. What's your next point?

MS. CROSS: That was that problem.

Then you wanted to rule on the photographs. Ms. Hynes has gone through those.

THE COURT: Yes.

MS. HYNES: Your Honor, let me just state for the record, because in reading the transcript your Honor ruled out yesterday the photograph of Cibala High School, but it wasn't identified on the record by exhibit number, which is IZ, so the record is complete on that.

In that record, the government would also object to IY, which is another picture of a -- this is an elementary school, Rio Rancho Elementary School.

THE COURT: Same ruling.

MS. CROSS: Your Honor, that is on the property.

THE COURT: It doesn't make any difference.

MR. FLEMING: May I speak to that, your Honor?

THE COURT: Go ahead.

MR. FLEMING: Well, the problem I have, I understand your Honor's point that there has been testimony that there is a school at Rio Rancho, but there has been no showing of the type of school it is and the substance of the school that it is.

THE COURT: I don't think it makes any difference. A school is a school is a school.

18 jurors here have gone to school. They know what a school is like and they know what it looks like. If they needed aid in understanding what you are talking about I would let it in, but they don't need any aid about what a school looks like.

MR. FLEMING: I understand that, your Honor.

But suppose, for example, the school was just a prefabricated three-room schoolhouse --

THE COURT: I don't think that is the experience of people in New York and there is no basis for them to think it is prefabricated.

MR. FLEMING: If we can have a stipulation to that effect --

THE COURT: I don't think you need it.

MR. FLEMING: That is my point.

THE COURT: I adhere to my ruling.

MR. FLEMING: There is a difference between a school and a school and evidence of good faith is --

THE COURT: There is no basis at all for anybody to infer anything other than what we understand what a school to be. Therefore, I adhere to my ruling.

MS. HYNES: Your Honor, in the same regard, there are two photographs of the outside of buildings at Rio Rancho. One is the medical center and the other is a Post Office.

There has also been testimony on this.

THE COURT: Yes. But I allowed the interior of the medical center. I will allow the exterior.

MS. HYNES: Okay.

What about the Post Office?

THE COURT: You don't need a Post Office.

MS. HYNES: That, for the record, is IV, the Post Office; and IW is the medical center.

Your Honor, the next group of photos, there are four photos, all of which have been taken from the top of the water tower as the designation reads from unit 11 water tower, and there are four photographs, HW, HT, HU and HV.

Just among themselves, they are cumulative.

THE COURT: Let me see them.

MS. HYNES: And the final photograph is the front door of a house in unit 11, which is IL, and I don't see the relevancy of the front door of that house.

THE COURT: I will let IL in, and the defendants can pick any one of HT, HU, HV and HW that it wishes to put in. The other three will be excluded.

MS. CROSS: Your Honor, they are four different directions.

THE COURT: They are all the same as far as I can see. I get the same impression from looking at all of them.

MS. HYNES: Your Honor, IF, IE, IG and IH are four photographs of the golf course.

THE COURT: Let me see them.

(Handing to the court.)

MS. CROSS: May I be heard before you rule, your Honor?

THE COURT: Yes.

MS. CROSS: Some of those pictures, as your Honor can see, have the fairways condominiums in it, which we think is important.

There is another one that goes down the golf course from the clubhouse.

THE COURT: IG goes in.

IH is out.

The defendants can pick either IE or IF.

MS. HYNES: IJ and IK are two pictures which relate to the mobile home park (handing).

THE COURT: The defendants can pick either IJ or IK.

This looks as the same building from either end of it.

MS. CROSS: They are two different homes in the mobile home park.

THE COURT: If you look at either one of them, it looks like the same mobile home.

MS. HYNES: Your Honor, IM, ID, II, IN, IP and IO are photographs of houses within the built-up portions of Rio Rancho.

We have photographs of the areas already in evidence; Corrales Heights, Panorama Heights.

MS. CROSS: I might note, your Honor, that these photographs are taken at different places in Rio Rancho. One is of the condominiums.

THE COURT: Pick any three.

MS. HYNES: Your Honor, IC is a picture of construction for the Felician Sisters convent.

Your Honor has already ruled out the photographs of the various churches and schools on the property.

THE COURT: Objection sustained to IC.

You already have that picture of the building completed in the film.

MS. CROSS: No, we don't, your Honor.

THE COURT: You have a woman standing in front of it, the Felician Sisters.

MS. CROSS: No, it is not that building. That building has just been completed. It was dedicated this Fall.

This picture was taken this Summer when it was under construction.

(Continued on next page.)

THE COURT: I don't think it adds one bit to show a building being built.

MS. HYNES: Your Honor, the remaining photographs, which are HQ, HO, HF, HG, HI, HN, HL, HK, and HJ are all photographs of the undeveloped portion of the property. We already have several of those photographs of undeveloped portions of the property in evidence.

THE COURT: What are these several I have submitted by the defendant?

MS. HYNES: Are you asking me, your Honor?

THE COURT: Yes.

MS. HYNES: There is a label on the back. I only know from the label on the back.

Let me add to that group HP.

THE COURT: I am asking you, as I asked yesterday, you said these were cumulative of ones taken by Kent.

Show me the Kent pictures that these are cumulative of.

(Pause)

MS. HYNES: Your Honor, there was a last picture I handed up to your Honor which was Unit 24.

THE COURT: I don't have any.

MS. HYNES: I have it.

gtjw 2

HP, which is now being offered, is not in evidence, is a photograph of Unit 24.

FU is an aerial photograph of Unit 24 which is already in evidence.

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: I gather the HP is being offered for the utility lines that are indicated. You can't see any utility lines in FU.

Objection overruled.

MS. HYNES: GB, which is in evidence, is Unit 9; HJ, which is being offered, is also Unit 9.

THE COURT: Let me see it.

(Handing to the Court)

MS. CROSS: Your Honor, we feel it is important for people to see what it looks like on the ground, too, which is what people have testified to.

THE COURT: You don't need ten pictures for that, Ms. Cross; two is sufficient.

MS. CROSS: Right. But we certainly --

THE COURT: You have given me, or at least Ms. Hynes has given me seven up here that I looked at. They all look the same to me.

MS. CROSS: We don't want to be accused in

gtjw 3

any way of not showing the undeveloped portion of this property as well as the developed portion.

THE COURT: Nobody is saying you can't show the undeveloped. You don't need nine photographs of the undeveloped.

Give me all those back, Ms. Hynes, that you gave me in this H series.

You pick any two you want of them. They look the same to me.

I am returning, Ms. Cross, H, I, J, K, L, N, O and Q.

Take any two you want, Ms. Cross.

MS. HYNES: The final objection, your Honor, is HY, which, again, is a sewage treatment plant, and there has been testimony as to the sewage treatment plant.

THE COURT: I will let it in.

I know what a school looks like. I don't know what a sewage treatment plant looks like.

MS. CROSS: Your Honor, as to photographs IN, IO, ID, IM, IP, II which you requested that we choose three, there is one picture of Panorama Heights, which is a concession of Rio Rancho, one picture of the Golden West condominiums, one picture of Corrales Heights and there is a picture of new townhouses that have been built and

gtjw 4

we would request the four of them.

THE COURT: Take them.

MR. FLEMING: Judge, I have one request.

The four pictures that were taken from the water tower, your Honor, they were taken in different directions. Your Honor asked us to take one.

I would like to take two simply because one shows the mountain, one shows the other direction. That was the argument made yesterday that at least implicit in the questioning --

THE COURT: Take one. I am sure you have enough mountains in the pictures to take care of your problem regarding the mountains.

MR. FLEMING: I want to show it in the other direction going out over the undeveloped land.

THE COURT: What are the directions that those two pictures were taken?

MS. HYNES: Both of those pictures shows undeveloped land.

THE COURT: He says he wants to get the mountains in, because you made a point yesterday in cross examining the witness as to what direction he was shooting.

MR. FLEMING: Exactly.

These are the two I would like to use.

gtjw 5

THE COURT: What are their views?

MR. FLEMING: HU and HW.

THE COURT: Do they look toward the east and the west?

MR. FLEMING: One looks directly toward the mountains, and that is the east, and one appears to be west.

THE COURT: All right.

MS. CROSS: As to the two pictures of the housing, we would take IM, II and ID.

THE COURT: Give them to Ms. Hynes.

(Pause)

THE COURT: Give them to the clerk to be marked.

MS. CROSS: I am somewhat confused at this point about what is in and what is out. Perhaps we should get --

THE COURT: I gave back to you three sets of photographs and told you to make choices.

MS. CROSS: Yes.

THE COURT: I am asking you for your choice.

MS. CROSS: All right.

On the mobile home park, we will take IJ.

On the golf course, we will take IF.

THE COURT: All right.

(Defendants Exhibits IF and IJ, respectively, received in evidence)

xx

MS. CROSS: I believe your Honor admitted HW, IG, IL, and the government has no objection to HS and HR.

THE COURT: Give them to the clerk to mark.

(Defendants Exhibits HW, HR, HS, IG and IL, respectively, received in evidence)

xx

MS. CROSS: On the housing, we selected IM, II and ID.

(Defendants Exhibits ID, II and IM, respectively, received in evidence)

x

MS. CROSS: The two views from the water towers are HU and HW.

(Defendants Exhibits HU and HW, respectively, received in evidence)

xxx

MS. CROSS: I believe your Honor asked us to select from the ground shots two pictures from among HO, HN, HF, HQ, HK, HJ, HI, HH, HG and HL.

We would select HG and HL.

(Defendants Exhibits HG and HL, respectively, received in evidence)

xxx

MS. CROSS: Your Honor also allowed in

gtjw 7

HP, which is the power lines.

THE COURT: Yes.

(Defendants Exhibit HP received in evidence)

xxx

MS. CROSS: There were some others that your Honor ruled on yesterday, but I have not gone through the transcript to see.

Perhaps we could -- for example, I believe your Honor ruled in the shot of the Roman Fountain factory.

THE COURT: The index will give you the exhibits.

In the H series, HD, c and E, but that is not the series we are talking about.

We are talking about the HF to IQ series.

MS. CROSS: Yes.

THE COURT: I ruled in none of those yesterday.

MS. CROSS: What?

THE COURT: I did not allow any of those in yesterday according to the transcript.

MS. CROSS: I thought your Honor had ruled on the factory in the industrial park.

THE COURT: If so, the index to these minutes do not show it.

GTJW 8

MS. CROSS: Sometimes they don't.

THE COURT: We will go back to Sennett's testimony.

These are all Sennett's photographs, are they not?

MS. CROSS: Yes, these are all Sennett's photographs we are talking about now.

Your Honor admitted the Kent photographs.

MR. FLEMING: Page 6126, your Honor --

THE COURT: What page are you on?

The Kent photographs have been passed upon, Mr. Fleming. We are dealing solely with the Sennett photographs in Series HF to IQ.

(Pause)

MR. FLEMING: Your Honor, you received JE, industrial park.

THE COURT: What page are you on? I am only up to 6154.

MR. FLEMING: At 6152, your Honor.

The question begins on page 6151, "With respect to JE, what is it?"

THE COURT: JE looks like it is in.

MR. FLEMING: And 6153, JF.

THE COURT: JF is in.

gtjw 9

MR. FLEMING: And JC.

Do you have that in your records?

THE CLERK: Yes.

THE COURT: I think the best way to do this is to have the clerk read off what his records show, and if you disagree then we can add to them.

Start from the beginning.

(Defendants Exhibits HF, HM, HX, HZ, IA, IX, respectively, received in evidence) xxx

THE COURT: What else?

(Defendants Exhibit IW received in evidence) x

THE COURT: What else?

THE CLERK: We start with the J series.

According to Ms. Hynes yesterday, she thought that Defendants Exhibits JA, JB, JD, DN, JH, JI, JJ, JL, JK, JM, JO, JP and JQ should be excluded, your Honor, because they were duplicates of Mr. Kent's photographs.

Are those the ones you were showing to the Court?

MS. HYNES: Was that at the very end of the day and then we were going to resolve it by checking the photographs?

gtjw 10

THE COURT: I gave them back to you and I ruled since then.

THE CLERK: She is objecting to those that she said were duplicate.

MS. CROSS: These are not those photographs. These are -- one of them is Cibala High School and others are shots of Rio Rancho, such as the dining room at the Panorama Inn.

THE COURT: I excluded those.

MS. CROSS: Yes. The dining room at the National Secretary's Association.

THE CLERK: Ms. Cross offered --

THE COURT: Are you through with the J Series?

THE CLERK: Yes.

THE COURT: Do you have all your J's arranged in order, do you, Ms. Cross?

MS. CROSS: No.

THE COURT: Put all your J's in order.

(Pause)

end 1b

THE CLERK: JC --

THE COURT: What about JA?

THE CLERK: Ms. Hynes objected to JA and JB.

THE COURT: Have I ruled on JA and JB?

MS. CROSS: I believe you have, your Honor.

MS. HYNES: I believe they have been ruled out.

THE COURT: All right.

JC?

MS. HYNES: JC is the inside shot of the factory.

MR. ARISOHN: I really don't recall whether you ruled them out or not. Given the confusion of the record already, why don't we just hand them up.

MR. ARKIN: Your Honor might as well have the entire series.

MR. ARISOHN: This is JA and B, and I have already handed --

MS. HYNES: We objected to the entire series.

THE COURT: I ruled JA out yesterday; I ruled JB out yesterday.

I ruled JD out yesterday.

I ruled JH out yesterday.

I ruled JI out yesterday.

I ruled JJ out yesterday.

I ruled JK out yesterday.

I ruled JL out yesterday.

I ruled JM out yesterday.

I ruled JN out yesterday.

I ruled JO out yesterday.

I ruled JP out yesterday.

I ruled JQ out yesterday.

And I now rule out JC, JE, JF and JG.

There are no J's in, as far as I can see.

I gather now the record is complete on the photographs of the HF-JQ series have been ruled upon, and those that are admitted have been indicated on the record this morning.

MS. HYNES: Your Honor, so the record is clear, I don't think you read off JG. It is in the J series.

THE COURT: Let me see it.

MS. CROSS: That is one of the factories that exists at Rio Rancho, your Honor.

THE COURT: Objection sustained.

No, leave that one in. That is an example of it. I will let that one in. JG is received.

XXX (Defendants' Exhibit JG received in evidence.)

MS. HYNES: Your Honor, IB has not been ruled on.

THE COURT: Let me see it.

MS. HYNES: This is, again, several pictures of construction already in evidence (handing).

THE COURT: Objection sustained.

This looks like a still of one that appears in the film that I saw at the beginning of this trial, a fellow putting two by fours up.

MS. CROSS: It is not, but --

THE COURT: It is not the same one, but it is a fellow building a house.

MS. CROSS: Then I would hand the clerk -- I believe the clerk read off earlier the ones I collected at the side, IA, IX, HX, HZ and HM that your Honor ruled on yesterday.

MS. HYNES: Your Honor, I would ask your Honor to take a look at those shots in view of your Honor's ruling on the whole group of pictures.

That, again, really duplicates shots that you saw in the film about construction. It adds nothing.

THE COURT: Objection sustained to IA.

Objection sustained to IX.

MS. CROSS: Your Honor, we think we ought to get in some scenes of construction at Rio Rancho, because that is one --

THE COURT: You built a house, you build a house.

The point is, how many houses you built, not how they were built. That's not an issue in this case.

HX, objection sustained.

HZ, objection sustained.

I let HM in, did I not? I let in some flowers in yet.

MS. CROSS: All of those pictures you ruled in yesterday.

THE COURT: I'm ruling them out now.

One flower I admitted. Is it HM?

MR. DEVORKIN: Yes, your Honor.

THE COURT: HM stays in.

Wait a second, HM has already been read off by the clerk five minutes ago saying it was in.

MS. CROSS: The pictures I just gave your Honor are the ones that the clerk ruled off and I gave it to him so he would mark the ticket in.

THE COURT: He just read before, when I asked him to read the exhibits that were admitted yesterday, he read HM.

MS. CROSS: He read all of the ones that I just gave him that your Honor had ruled on yesterday, and I merely gave them to the clerk to mark the tag in, the group that you just went through. You ruled them in yesterday.

THE COURT: I didn't rule them in yesterday.

MS. CROSS: Those are the ones that the clerk read off.

THE COURT: He did not.

MS. CROSS: Could we check with the clerk?

THE COURT: He read off from a list in his hand those that were admitted yesterday. They were HM, HN, HX, HZ, IA and IX. That's what he read off as having been admitted yesterday.

These were not admitted yesterday; IB was not admitted yesterday. It is being offered to me now and I reject is.

MS. CROSS: IB was admitted yesterday. Mr. Fleming read it.

THE COURT: Not according to the clerk.

MS. CROSS: We read in the transcript. That was the first one we read into the transcript.

THE COURT: Ms. Cross, I told you to listen to the clerk as he read off what his record showed. He read off HF, HM, HX, HZ, IA and IX as having been admitted yesterday.

MS. CROSS: Yes.

THE COURT: That's what he said was in.

The one you just gave me, the fellow bending over hitting a hammer, IB, is not in that list.

MS. CROSS: No. That one I did not give to you. That is the one Ms. Hynes just gave to you.

I gave the clerk a batch --

THE COURT: You gave it back to me in the list that was in my hand. That was on top.

MS. CROSS: That was one that Ms. Hynes gave you as duplicative.

THE COURT: The record shows that HZ was admitted yesterday.

Ms. Hynes, did you make an objection? Did I overrule your objection yesterday?

MS. HYNES: Your Honor, I made objections to any of those that came in and I asked your Honor just before to reconsider in light of your Honor's ruling as to the totality of the pictures.

At that time your Honor didn't have all the pictures in front of you. At this time you do. The ruling on cumulativeness and relevancy is before your Honor in view of all of the pictures.

(Continued on next page.)

THE COURT: HZ, which the record shows was admitted yesterday, is now excluded.

HX, which the record shows was admitted yesterday, is now excluded.

IX, which was admitted yesterday, is now excluded.

IA, which was admitted yesterday, is now excluded.

There is another fellow hitting with a hammer hitting some two by fours.

Now put your pictures in order, Ms. Cross, and we will send them into the jury, they can look at them now, and we will have a recess and bring the jury back and we will then continue until quarter of one or one o'clock with the testimony. It is now five minutes to eleven.

MR. DEVORKIN: Can I raise one minor point with your Honor briefly?

Yesterday afternoon, after court, I called Richard Godfrey in Albuquerque who is listed on the defense expert list as an appraiser expert, and I spoke to Mr. Godfried when he was going to testify in the case. He indicated he didn't know at that time, he was waiting for the defendants to finally tell him.

gtjw 2

I asked him explicitly whether he would mind talking to me about the subject matter of his possible testimony. I was pretty careful about taking down what he was telling me at that time.

He told me that he had no objection to speaking to me if the defendants or his client had no objection to him speaking to me.

Basically, he said he didn't care one way or the other if they didn't oppose him speaking to me.

I called Mr. Arkin after that and asked him if he would -- Mr. Godfrey asked me to have Mr. Arkin call him. I called Mr. Arkin, asked him to call Mr. Godfrey and give the statement that he normally gave witnesses of his.

Mr. Arkin indicated he would cooperate and call Mr. Godfrey, and apparently he did, because I called Mr. Godfrey a short time thereafter and he had spoken to Mr. Arkin.

However, at this time, contrary to what he quite explicitly told me before, he said that he would not speak to me and he had no interest in speaking to me and, basically, didn't care to discuss anything, unless ordered to do so by his client or the Court.

I put back to him what he had said to me earlier and asked him if, in fact, his client had no opposition to his speaking to me. I put it in the negative. And he acquiesced in that statement. He agreed that his client had no opposition to speaking to me.

I just bring it to your Honor's attention. I think your Honor and the defendants have something to do -- can do something about this situation.

THE COURT: I am not going to interfere at all.

MR. DEVORKIN: It is the second time where we had an incident where a witness says he will talk and after he talks to defense counsel he changes his mind. I just bring it to your Honor's attention.

THE COURT: You made a note of it.

We will now have a recess.

MR. FLEMING: Judge, the concern I have, and I don't know precisely how to phrase my request, is that our purpose in photographing the entire property was to photograph the entire property so that no argument would be made that we were being selective in the pictures that we were taking.

Now because of the ruling that your Honor has made which is based upon, I think, a theory of representative photographs --

THE COURT: You have in this series here, you have about 24 pictures in.

MR. FLEMING: Judge, I did take exception to your Honor's ruling on the exclusion of the photographs because I believe we have the right on the issue of good faith to show the property to its fullest.

Putting the exception I have taken aside --

THE COURT: Why don't we take the jury in a helicopter and fly them over the property.

MR. FLEMING: Let's consider that.

THE COURT: But I am not interested in going to Albuquerque and stop the trial.

MR. FLEMING: It is a lot nicer than it is here.

Your Honor, I made my exception and the basis of the exception is --

THE COURT: You can take 5,000 pictures. Then you can say you are entitled to put 5,000 pictures in.

MR. FLEMING: I made the exception.

I am talking about the tactics of the trial.

I don't want the jury to misunderstand. We took the entire property to show the development as most fully as we could and also to avoid the accusation that we were selective in the photographs that we have taken.

THE COURT: I gather the government isn't going to make that contention.

MR. FLEMING: No. But I am getting at --

THE COURT: I don't see that there is any dispute that what you built you built.

MR. FLEMING: Judge, I am a little psychotic on juries.

What I am saying is this, that your Honor has excluded -- to put it another way, has received those pictures on the basis that the pictures received are fairly representative of the property.

THE COURT: These plus Kent's pictures.

MR. FLEMING: And I would like your Honor to instruct the jury that the photographs they are receiving result from your Honor's ruling as to what depicts the property without unnecessary accumulation so that the jury --

THE COURT: I am perfectly willing to tell that to the jury.

MR. FLEMING: That's all.

THE COURT: By the way, since you have indicated the defense case without cross examination would run two or three weeks, I will fix a date for requests to charge, which will be two weeks from today, January 18th. All requests to charge to be submitted by January 18th.

Do you have your pictures in order now? Do those include the Kent pictures?

MS. CROSS: I don't have all the Kent pictures in order yet.

MR. ARKIN: Ms. Cross will put them in order right now, your Honor.

MS. CROSS: I believe the clerk as all the Sennett pictures.

THE COURT: If they are in order, Mr. Clerk, give them to the jury to look at.

MR. ARISOHN: Your Honor, one brief matter.

I understand this morning Ms. Hynes spoke to Mr. Kearney, who is the witness now on cross examination.

As the government did during its presentation, I would request about two minutes to speak to Mr. Kearney prior to redirect.

THE COURT: You may.

MR. ARISOHN: Thank you, your Honor.

THE COURT: What about this problem of turning names over of prospective witnesses, are you following the same procedure the government followed with

gtjw 7

you?

MR. ARKIN: The evening before, your Honor, yes.

THE COURT: All right.

(Recess)

end t

A

(In open court - jury present)

JOHN B. KEARNEY, resumed.

THE COURT: Before we continue the cross examination of the witness, I sent in a batch of exhibits to the jury and I admitted in evidence what I thought to be a representative cross-section of the photographs rather than all of them because there is no sense in loading the record with an accumulation of evidence as long as you get a picture of what is involved, so in short only some of them that were offered were accepted, and the others were rejected as cumulative or because they didn't deal with the issues in the case.

CROSS EXAMINATION CONTINUED

XX

BY MS. HYNES:

Q Mr. Kearney, you spoke with representatives of the United States Attorney's office this morning?

A Yes.

Q Before we recessed yesterday I was asking you about the residence, people who actually lived at Rio Rancho, and you testified that basically people who lived at Rio Rancho were people who moved there from other parts of the country. Is that correct?

A That's correct.

Q In your responsibilities as chief of the volunteer fire company at Rio Rancho,you testified yesterday with respect to certain records that you keep.

Is that correct?

A That's correct.

Q Do those records also include records of where people lived prior to moving to Rio Rancho?

A That's correct.

Q Do your records show that approximately fifty families, to the best of your recollection, moved to Rio Rancho from Bernalillo County; is that correct?

A That's correct.

Q You have been keeping those records since 1967, is that correct?

A Right.

Q Of the fifty families, approximately, that your records reflect from 1967 moved to Rio Rancho, do you know whether any of those fifty families were living temporarily in Albuquerque until a home was ready for them at Rio Rancho?

In other words, that they had a lot at Rio Rancho and were waiting for their home to be completed?

A I have no idea of that. No way of telling that.

Q But it could be that some of them --

MR. ARKIN: Objection.

THE COURT: Sustained.

Q When you bought your property back in 1962, I am going to show you Government Exhibit 140-L.

Do you recognize this?

A Yes, miss, that's the descriptive literature that was sent to me.

Q And you received something similar to 140-L?

A Similar, that's right, miss, yes.

Q When you bought your property back in 1962, did a salesman come to visit you with respect to your request from Roth Realty?

A No, miss.

Q You testified you bought an acre at Unit 6 in 1965, and that you looked at several pieces and you finally chose the one acre you own today, is that correct?

A That's correct.

Q And that that acre was on a knoll, is that correct?

A Yes, miss.

Q And you specially picked that piece of property out?

A Yes.

Q At the time you bought that piece of property in 1965 did you expect that utilities would eventually be extended to the property in Unit 6?

A Through development.

Q But you did expect utilities eventually?

A Eventually.

Q And did you expect that the property that you bought in Unit 6, the one acre which you picked out on the knoll, could be used to build a house on?

A Eventually, yes, miss.

Q And in fact you testified that you had in mind when you bought that acre in Unit 6 your son in terms of perhaps he might want to build on that property?

A That's correct, miss.

Q And in 1965, your son was what, fourteen years old?

A That's correct.

Q Did you also testify that in fact in February of this year your son is going to move to Rio Rancho, is that right?

A Next month, yes, miss.

Q And he will not be able to build his house on your land in Unit 6?

A No, because the area is not developed.

Q When you bought your piece of property in Unit 6, you signed a property visitation form.

Do you recall that in 1965?

A Something like that.

Q Do you recall signing a property visitation form, that you were satisfied with the property?

A I don't know whether that was expressed in the contract or not that I signed for the property when I visited Rio Rancho in April 1965.

Q Mr. Keearney, I have a microfiche machine here. I have a hard copy which isn't too cler, but the machine is a little clearer.

Will you step down and let me show you this and see if it refreshes your recollection that you signed a record property visitation.

Is that your signature?

A That's my signature, yes.

Q And next to comments does it say, "Very good planning for layout of lots and utilities"?

A That's correct.

Q And you signed that in February of 1965?

A Yes.

Q And you believed that the one acre that you were buying in Unit 6 was a good layout for utilities if a home was to be built on that acre?

A Yes, I do.

MR. ARKIN: Objection, your Honor, that is a misleading question.

THE COURT: Overruled.

Q Mr. Kearney, I am going to show you what has been marked Government Exhibit 83 in evidence. This is a map of Rio Rancho Estates.

The utilities have been placed in company-owned building areas, is that correct?

MR. ARISOHN: Objection.

THE COURT: What is the basis of the objection?

MR. ARISOHN: It is assuming a fact not in evidence, and there is no basis for this witness to know.

THE COURT: She is asking if this is true. He can answer yes or no.

A Will you repeat the question, please.

Q The utilities have been placed in company-owned building areas that have been reserved for management, is that correct?

A The utilities are in the developed area.

Q And your house is in Unit 16, is that correct?

A That's right.

Q And Unit 16 is down here, is that correct?

A It looks like it.

MR. ARKIN: Will you refer to the location for the record.

Q The witness is pointing to the far east portion of Unit 16, and the designation is -- where are you pointing, Mr. Kearney?

A 5-A, the corner one.

Q And that pie-shaped area in Unit 16 is where the homes are, is that correct?

A In 16, yes. Also down this way.

Q There are utilities a little beyond that pie-shaped area.

A Yes.

Q Are there houses in that area?

A Yes, ma'am.

Q There are also utilities of Highway 528 in what is known as the Corrales Heights area; is that correct?

A Yes.

Q And this is the golf course area, Panorama Heights?

A That's correct.

Q And then there are utilities in a portion of Unit 11, is that correct?

A That's correct.

Q When you bought your house you did not exercise your right to exchange, is that correct?

A No, I didn't.

Q You bought the house from someone else?

A That's right.

Q Has your son made definite plans to build at Rio Rancho?

A No, not yet.

Q Has he discussed --

A Discussed it, yes.

Q Building sites?

A No.

Q He hasn't made any decision about it?

A No, he discussed it with me when I had him out in New Mexico last January.

Q You have been living at Rio Rancho since 1967; is that correct?

A That's correct.

Q And since 1967 the city of Albuquerque and the population of Bernalillo County has grown, is that correct?

A That's correct.

Q And it's grown from 1967 to today by approximately 70,000 people, would you say?

A That's about right.

Q Roughly?

A Yes.

Q And that growth, those 70,000 people, the primary direction of growth over that last ten year period has been to the northeast, is that correct?

MR. ARISOHN: Objection, your Honor.

THE COURT: If he knows. If he doesn't know, he can say he doesn't know.

A It has spread out both east and west.

Q When you say east, has at least some of that growth been to the northeast?

MR. ARISOHN: Objection.

THE COURT: I will leave it up to the witness.

A Part to the northeast and part to the west.

Q And when you say west are you referring to the west side of Albuquerque?

A That's correct.

Q Pointing to Government Exhibit 1075-A in evidence, Mr. Kearney, there is a great deal of vacant land on the west side of Albuquerque within Bernalillo County, is that correct?

A Yes.

MR. ARISOHN: Objection.

THE COURT: I sustain that objection.

MR. ARISOHN: May we have the question and answer stricken from the record.

THE COURT: He didn't answer it, did he?

MS. HYNES: Yes, he did.

THE COURT: I didn't hear him.

THE WITNESS: I am sorry.

Q Mr. Kearney, it is a fact, isn't it, that the growth in population of 70,000 people in Albuquerque over the ten years that you have lived in Rio Rancho has spread out in all areas of Bernalillo County, isn't that correct?

MR. ARISOHN: Objection.

THE COURT: Overruled.

You may answer the question, if you know the answer. If you don't know the answer, just say you don't know.

THE WITNESS: Repeat the question, please.

MS. HYNES: May we have the question read back, please.

(Question read)

A Yes. East and West.

Q Are you familiar with the subdivision called Volcano Cliffs?

A Yes.

Q Is that approximately ten miles south of Rio Rancho on the west side of Albuquerque?

A About that.

Q Do you know how much approximately Volcano Cliffs is?

A No, I don't.

Q It is not fully developed, is it?

A No, ma'am.

Q Are you familiar with West Gate Heights?

A Yes, ma'am.

Q Is that approximately twenty miles south of Rio Rancho on the west side of Albuquerque, southwest?

A That's correct. Yes.

Q And approximately how large is West Gate Heights?

A Probably twenty to twenty-five square miles.

Q Has that West Gate Heights been built up since you have lived at Rio Rancho?

A Quite a bit, yes.

end t

Q And it's a fair statement, isn't it, Mr. Kearney, that there is no shortage of land on the west side of Albuquerque?

THE COURT: Nor shortage of land for what?

MS. HYNES: For building houses.

A That's the only area that --

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A That's the only area that's vacant where it could be developed.

Q My question is, there is no shortage of land on the west side to use it for residential, is there?

MR. FLEMING: I object to that.

THE COURT: Overruled.

A There is plenty of land on the west side to be developed, which includes Rio Rancho.

Q Is there plenty of land on the west side in Bernalillo County?

A Yes, Bernalillo County comes up to the tip of Rio Rancho.

Q Yes.

A The county line.

Q I am directing my attention to Bernalillo County now, on the west side.

THE COURT: You mean his attention, not yours.

MS. HYNES: I am sorry, his attention.

Q I am directing your attention to the west side of Albuquerque, which includes -- you come up to the Bernalillo County line?

A There is four or five developments along there.

Q In fact, there is plenty of vacant land there for residential development?

MR. ARKIN: I don't know what the word plenty means, your Honor.

THE COURT: Objection sustained.

Q Mr. Kearney, you were given Government Exhibit 317 in evidence to read, is that correct?

A That's correct, Miss.

Q Have you read it?

A Yes, Miss.

Q Do your initials appear on it?

A That's correct.

Q Is Government Exhibit 317 substantially the presentation that you heard from the speaker at the dinner that you attended in Huntington, Long Island, as best as you can recall?

A Pretty much so. The format is practically the same.

Q And Government Exhibit 317 in evidence on page 5 states that Albuquerque's growth offers you an opportunity to make a great deal of money. Is that correct?

A I don't recall that, Miss.

Q Let me refer you to page 5, it goes over to page 6, and follow with me, "Albuquerque's growth offers you an opportunity to make a great deal of money, and that's what we are going to talk about here this evening, making a great deal of money because I am assuming everybody likes to make money."

Did I read correctly?

A That's what it says there.

Q Okay.

And on page 6 of Government Exhibit 317 in evidence at the bottom of the page it says, "Albuquerque is bursting at the seams, yet the city can only expand in one direction, to the northwest, and this is precisely where Rio Rancho Estates is located."

Am I reading correctly?

A That's correct.

Q On page 7 of Government 317 it states, "The only direction in which the city can grow and where Rio Rancho is located right in the path of Albuquerque's expansion."

Have I read correctly?

A That's correct.

MR. ARKIN: We will stipulate Ms. Hynes does read correctly. The point is what this man heard, and I object to the line of questioning.

THE COURT: He read 317, and it's in evidence, so what's the purpose of reading each portion to him? It's in evidence.

Q Do you recall at the sales dinner that you attended in Huntington that the speaker made a comparison between investing in land and investing in mutual funds and stocks and bonds?

A No, Miss.

Q And also compared it to an investment in savings?

A I don't recall the exact words used in his speech that night.

Q I am not asking for exact words, I am just asking if you recall that there was a comparison between an investment in Rio Rancho and an investment in other forms of, such as stocks, bonds, and banks?

A No.

Q Looking at page --

THE COURT: No, wait. He says he doesn't recall. He doesn't say it wasn't done. Your question was does he recall, and he says he doesn't recall.

MS. HYNES: I am trying to refresh his recollection.

THE COURT: You have made a point he read it before. You don't have to refresh his recollection again.

MS. HYNES: I want to refer him to a specific page. It's 22 pages.

THE COURT: He read the whole thing. I gather the reason you had him read it before you put him on the stand was to refresh his recollection.

Q Mr. Kearney, it's a fact, isn't it, that less than 5 per cent of the property of Rio Rancho Estates has been developed to date? Is that correct?

A I guess that's about right.

MS. HYNES: I have no further questions, your Honor.

THE COURT: Redirect.

MR. ARISOHN: May we have a recess?

THE COURT: We will have a short recess. We will sit here while you talk to the witness. It's quicker for three of them to leave than for 18 of us.

(Recess.)

(Pause.)

THE COURT: I think I should tell the jury that the court's allowing defense counsel to talk to the witness before redirect is the same privilege I afforded the government to speak to their witnesses before they conducted redirect. This is not an unusual procedure.

XXX REDIRECT EXAMINATION

BY MR. ARISOHN:

Q Yesterday, do you recall being shown Prosecution's Exhibit 146-S, and Ms. Hynes asked you whether that was the booklet which you received, or which was available at the dinner party you attended in Huntington?

A It was something like this. I don't recall if it was the exact copy or not, but it had a breakdown like on this page here, the consolidated statement of income and retained earnings. I remember that being in there.

Q So that your testimony yesterday that you did not receive this particular booklet --

A But there was some -- there was a booklet that did have a break -- here's another one, the utilities out there, I remember that. So those two items were in the booklet that I read, and I am not sure whether this is the same one or not.

Q So the record is clear, did you receive a booklet, if not this exact one, like this one?

A Or booklets, yes.

Q Do you recall Ms. Hynes asking you on cross examination yesterday about your telephone call to the New York office regarding the ambulance?

A That's correct.

Q Do you recall when you asked to speak to Mr. Howard Friedman how you introduced yourself?

A I told them that this is Fire Chief Kearney from Rio Rancho and I was in New York and I wanted to make an appointment.

Q You were asked about utilities in unit 16. You live in unit 16, do you not?

A That's correct.

Q The lot you live on does have utilities, does it not?

A That's correct.

Q Do you own your lot?

A Yes, sir.

Q The company doesn't own that lot, does it?

A No, sir.

Q Do the neighbors who live around you have utilities?

A Yes, sir.

Q Do your neighbors own their lots?

A As far as I know.

Q The company doesn't own your neighbors' lots, do they?

A No.

Q Since 1967, Mr. Kearney, have you had occasion to travel around Albuquerque?

A Yes, sir.

Q Have you traveled around Albuquerque lately?

A Oh, up until last Wednesday.

Q Based upon your observations in Albuquerque, are you able to tell us whether there is much land left in the northeast?

A Well, comparing it to other sections of the city I would say no.

Q Have you been able to observe in which direction the city of Albuquerque is growing?

A It's growing to the northwest.

Q You testified a few minutes ago on cross examination that you have discussed with your son the possibility of living at Rio Rancho.

You also testified that he wouldn't be living on the lot in unit 16.

A That's correct.

Q Did anyone from Rio Rancho or AMREP Corporation ever tell you or represent to you that the lot in unit 16 would be developed in any given period of time?

A No, sir.

Q In fact, Mr. Kearney --

MS. HYNES: Objection. He is leading, your Honor.

THE COURT: Overruled.

Q In fact, Mr. Kearney, how did you intend to have your son live at Rio Rancho?

MS. HYNES: Can we fix a time?

THE COURT: I gather he is coming out there next month.

MS. HYNES: I meant --

THE COURT: He said he had talks with his son in January about coming out. He is coming out next month to live.

A I intend to take advantage of the exchange privileges in the contract. Take my half acre from unit 2 and use it to purchase property in a developed area.

Q Do you believe the land you own at Rio Rancho has been a good investment?

A I personally believe it is. I am going to take advantage of it right now, within the next two months.

Q Do you believe that you have been cheated by Rio Rancho and AMREP?

MS. HYNES: Objection.

THE COURT: Overruled.

A No, it was my own investment, my own study of the property, and what I could use it in the future for.

MR. ARISOHN: I have no further questions.

THE COURT: You may step down.

MS. HYNES: I have one question.

THE COURT: No questions. He kept strictly within the bounds of redirect.

(Witness excused.)

(Continued on next page.)

MR. SPRIZZO: Mr. Frappier.

XXX

RAYMOND FRAPPIER, called as a witness by the defendants, having first been duly sworn, testified as follows:

XXX

DIRECT EXAMINATION

BY MR. SPRIZZO:

Q Mr. Frappier, where do you live?

A 3608 Oak Pine Drive, Rio Rancho, New Mexico.

Q How long have you lived at Rio Rancho?

A Four and a half years.

Q Are you employed?

A Yes, sir.

Q What is your present occupation?

A Car salesman for Richardson Ford in Albuquerque.

Q Can you keep your voice up a little louder so everyone can hear you.

A Okay.

Q How long have you been employed with Richardson Ford?

A Since May.

Q And prior to that time, were you employed any place else?

A Ken Johns Lincoln-Mercury.

THE COURT: You have to keep your voice up, because I even have trouble hearing you. All the jurors want to hear you.

Sit back and relax.

Q Did there come a time when you heard of a place called Rio Rancho?

A Yes, sir, in 1971.

Q Do you recall the circumstances under which you first heard of Rio Rancho?

A My sister.

Q Did you have a conversation with your sister?

A Yes, I did.

Q And as a result of that conversation, did you ask her to do anything for you?

A I asked her to call Roth Realty in New York to send a salesman out to the home, and I was interested in purchasing some land, which I did.

Q Did there come a time when a salesman visited your home?

A Yes, sir.

Q Do you recall approximately when that was?

A It was in December of 1971.

THE COURT: Fix where the gentleman was living then.

MR. SPRIZZO: Excuse me, Judge.

Q Where did you live at that time?

A I lived in Waterbury, Connecticut.

Q Had you lived in Waterbury, Connecticut, all your life?

A Yes, sir.

Q What was your occupation in Waterbury, Connecticut?

A Automobile mechanic.

Q And the salesman came to your house in Waterbury, Connecticut, is that correct?

A Yes, sir.

Q Did you have a conversation with the salesman on that occasion?

A Yes, I did.

Q About how long did the conversation last?

A Oh, approximately two hours, two and a half hours.

Q What is your best recollection of the substance of the conversation you had with the salesman?

A Oh, prices of land, location, growth in Albuquerque and growth in Rio Rancho.

Q Do you recall what was said?

A Oh, yea.

He said that the parts of Albuquerque that was growing was the west side towards Rio Rancho and the north side, which I found to be true.

Q When you say you found them to be true, when did you find them to be true?

A When I came out there on the tour.

Q Did you have any discussion with the salesman, by the way, about the tour?

A Yes. I asked him when the next tour was, and he called me --

Q Did you come on what was called a fly and buy tour?

A Yes, sir.

Q Was that discussed with the salesman on that first occasion?

A Yes, sir.

Q So you did express to the salesman your interest in buying a home at Rio Rancho?

A Yes, sir.

Q And was it his suggestion to take a fly and buy tour?

A Yes.

Q What was your understanding, Mr. Frappier, based on your conversations with the salesman as to what type of land you were purchasing?

A It was raw land, and he explained that.

Q What did he explain to you about the nature of the land?

A As far as the material part of it?

Q As far as the nature of the land, whether it was developed or undeveloped.

A It was undeveloped land.

Q Did he say anything about utilities?

A He said there was no utilities there at all.

Q Was there any discussion about the exchange right?

A Yes.

Q What discussion did you have about an exchange right?

A He said that we could trade in half an acre of land for a building lot in Panorama Heights, where we expected to buy, which we did.

Q And did you purchase any land on that occasion?

A When we were at --

Q At your house in Waterbury, Connecticut.

Q Yes. I bought an acre.

Q Where was your acre located; do you recall?

A In unit 26.

Q And how much did you pay for it; do you recall?

A $3800.

Q Did you sign a contract?

A Yes, sir.

Q Do you recall whether or not on that occasion you received any literature from the company?

A Yes, sir.

Q And included in that literature, was there an offering statement?

A Yes, sir.

Q What was the name of your salesman?

A Louis Rosen, I think.

MR. SPRIZZO: May this be marked the next number.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit JT marked for identification.)

Q Mr. Frappier, I show you what has been marked as Defendants' JT for identification (handing).

Would you look at that and see if you can identify it?

A Yes, this is mine which I received from the salesman.

Q Is that the document you received?

A Yes, sir.

Q And is that the document you produced for me yesterday when you spoke to me?

A Yes, sir.

MR. SPRIZZO: Your Honor, I would offer it.

There is one like it in evidence. I don't know if you want to duplicate the record, but I offer it.

MR. KAUFMAN: Is it the same thing?

MR. SPRIZZO: It is a duplicate.

THE COURT: It doesn't have to be offered.

MR. SPRIZZO: I don't think it has to go into evidence. I just want to be quite clear it is the same one. There is one in evidence.

THE COURT: All right. What is the exhibit number?

MR. SPRIZZO: The exhibit number is AD in evidence.

THE COURT: All right.

Q Did there come a time when you went out to visit Rio Rancho?

A Yes, sir, in January of 1972.

Q Did you go out with your wife?

A Yes, sir.

Q I think you testified that was a fly and buy tour.

What does that mean in terms of your understanding of it?

A A fly and buy purchase was -- you did pay for the trip going in, which is approximately $400, and if you did purchase your home that $400 would be deducted from the total price of your home.

Q And you did buy a home while you were in Rio Rancho in New Mexico?

A Yes, sir.

Q And you received that $400 deduction?

A Yes, sir.

Q How long did you stay in New Mexico when you went out there?

A Five days.

Q Did you have a good time?

A Yes, sir.

Q Now, how many people were on the plane when you went out there on this fly and buy tour?

A Well, I think it was a 727 and it was full.

Q These were all people who were interested in either possibly buying homes at Rio Rancho?

A Yes, sir.

Q Did you stay together with the group when you were on the tour?

A Oh, for probably 50 per cent of the time.

Q What did you do with the other 50 per cent of your time?

A Made plans to build a home.

Q Did anyone try to coerce you into staying with the group?

A No, sir.

Q Who did you deal with out there when you were buying your home?

A Tommy Neil.

Q Did you spend a lot of time with him?

A Yes, sir.

Q Selecting models and that sort of thing?

A Yes, sir.

Q Did you decide upon a particular model you liked?

A Yes, sir.

Q How much did you pay for your home?

A Including land was $33,000.

Q Did you make any efforts while you were in Albuquerque to find employment?

A Yes, sir. That was the first thing I did.

Q Did the company or did AMREP assist you in any way in that regard?

A The salesman drove me to Albuquerque.

Q He drove you where?

A To Holland Lincoln-Mercury at the time.

Q And were you able to obtain emplo-ment?

A Yes, sir.

Q In what capacity?

A Automobile mechanic.

Q When you went out on this fly and buy tour, do you recall the route -- by the way, when you landed in Albuquerque, were you picked up at the airport?

A Yes, sir.

Q How were you picked up?

A Bus.

Q Was that an AMREP bus?

A I believe it was. I'm sure it was.

Q Do you recall what route the bus took taking you out to Rio Rancho?

A Yes. From the airport we got onto I-40 going west and up Coors Road.

Q And where did you stay for these five days when you went to Rio Rancho?

A Panorama Inn in Rio Rancho.

Q Were the accommodations satisfactory?

A Yes, sir.

Q After you spent your five days at Rio Rancho, di you return to Waterbury, Connecticut?

A Yes, sir.

Q What did you do when you were at Waterbury, Connecticut?

A I sold or put my house on the market for sale.

Q How long did it take you to sell your house?

A Five or six months.

Q When you were in New Mexico on your fly and buy tour, did you sign a purchase agreement for a house at Rio Rancho?

A Yes.

Q Did there come a time when you moved to Rio Rancho?

A Moved there in July of 1972.

Q When you moved, was your house ready at the time you arrived?

A No, sir.

Q Where did you stay while your house was being built?

A We had rented a house.

Q Did AMREP have anything to do with the rental of your house?

A Yes, sir. They made all the arrangements.

Q Were you satisfied with the arrangements they made?

A Yes, sir.

Q When you went out to Rio Rancho to inspect it on this fly and buy tour, were you taken out to your lot on unit 26?

A Yes, sir.

Q Were you surprised or disappointed at what you saw?

A No, sir.

Q Did anything you saw when you were out at unit 26 make you believe that you were misled in New York by the salesman, I mean in Connecticut, by the salesman?

A No, sir.

Q You did not feel you were deceived or misled?

A No, sir.

Q Did you find that anything he had told you was false?

A No, sir.

Q When you bought your home, Mr. Frappier, did you exchange your lot in unit 26?

A Yes, I did.

Q How much of your lot in -- how much of your acreage, your one acre in unit 26, did you exchange?

A One half acre.

Q Where did you decide to move?

A Panorama Heights.

Q Did that cost you an additional sum of money?

A Roughly $3,000.

Q Did you ever consider moving into one of the exchange areas?

A No, sir, I didn't even consider it.

Q Why was that?

A Because we wanted to live near the golf course and we figured if we would sell the house in four, five, six years it would be worth more there than it would be some place else, which it is today.

Q You say your house is worth more today. How did you know that?

A I didn't have it appraised, but I had realtors come up and look at it.

Q And is your house on the market now?

A Yes, sir.

Q How much are you asking for your house?

A $86,300.

Q And what was your total investment in terms of money in that house?

A About 45,000.

Q Do you feel your purchase of land in Rio Rancho and your home in Rio Rancho was a good investment?

A It sure was.

Q You have lived at Rio Rancho for four years.

Has Rio Rancho grown during the four years that you have been there?

A Oh, yes, quite a bit.

Q Will you describe to the jury the way in which it has grown?

A Oh, as far as amounts of homes?

Q Yes.

A Well, there are twice as many homes there, I believe, in the last four years than there was when I moved there.

Q Excuse me, I didn't get your answer.

A Twice as many homes as there was when I moved there.

Q How do you feel about living at Rio Rancho?

A I enjoy it.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A I enjoy it.

THE COURT: How do you feel about investment? What's the difference?

MR. KAUFMAN: I just don't understand the question.

THE COURT: I don't understand how you feel about investments.

Q Do you like living at Rio Rancho?

A Yes, I do.

Q What do you like about living at Rio Rancho?

A Everything. You know, the community, the kids got pools, they have got churches there, they have got shopping centers, it's convenient and it's out in the country, kind of. It's beautiful.

Q Are you familiar with the northeastern section of Albuquerque?

A Yes, sir.

Q Is that a place where you would like to live?

A No, sir.

Q Any reason why?

A It's too congested.

MR. SPRIZZO: Excuse me for a minute.

(Pause.)

Q On which side of the river is Coors Road on, Coors Boulevard?

A It's on the west side.

MR. SPRIZZO: I don't have any further questions, your Honor.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MR. KAUFMAN:

Q Mr. Frappier, my name is Allan Kaufman.

You testified that you first heard about Rio Rancho Estates from your sister, is that correct?

A Correct.

Q Does she live out there?

A Yes, she does.

Q And she had a salesman then come visit you at your home, is that correct?

A Correct.

Q Did he show you any films when he came to your home?

A No, sir.

Q Did he show you any slides?

A No, sir.

Q Was he reading from a script?

A No, sir.

Q Did you tell him when he came to visit you that you were interested in buying land at Rio Rancho Estates because you wanted to move there?

A I told him I was interested in buying land at Rio Rancho.

Q And why was it that you wanted to buy land at Rio Rancho?

A The way my sister talked about it, she says it would be a good investment, which it was.

Q And was buying it as an investment your prime motive or was it buying it to relocate to Rio Rancho your prime motive?

A Both.

MR. KAUFMAN: Can you mark this, please.

XXX (Government's Exhibit 2001 marked for identification.)

Q Mr. Frappier, I show you what has been marked as Government's Exhibit 2001 for identification, and ask you if you can identify that (handing).

A Yes.

Q Does your handwriting appear anywhere there?

A It looks like my handwriting right here (indicating) right on top.

Q And the handwriting next to number one, is that yours?

A I don't know for sure.

Q Do you recall filling out that document or having somebody fill it out in your presence?

A I filled this out up here (indicating).

Q And do you know who filled out the writing that appears next to the number one?

A No, I don't. I don't remember.

Q Does this accurately portray your priority interest in buying Rio Rancho land?

A Yes.

Q The answer is yes?

A Yes.

MR. KAUFMAN: The government offers 2001.

MR. ARKIN: No objection.

MR. FLEMING: May I ask a question?

MR. SPRIZZO: Just one question.

Was this filled out when you were out there at Rio Roncho?

THE WITNESS: I don't remember.

MR. SPRIZZO: You don't remember where it was filled out?

THE WITNESS: I think it was at the home. I'm not sure.

MR. SPRIZZO: I don't have any objection.

XXX (Government's Exhibit No. 2001 received in evidence.)

MR. KAUFMAN: If I may just read a portion of this, your Honor.

(Mr. Kaufman read from Government's Exhibit 2001 in evidence to the jury.)

Q And, indeed, Mr. Frappier, very soon after you signed the contract for the purchase of the land, you went out on the fly and buy tour and did sign a contract for the purchase of a home, is that right?

A Agreed, yes.

Q Now, when you say one of your other reasons for buying land at Rio Rancho was as an investment, I take it what you are saying is that it was as an investment so that you could put a home on that land and then maybe eventually resell it, is that right?

A Correct.

(Continued on next page.)

T4B

Q Did you ever consider buying the land and just holding on to it and sometime later trying to resell it?

A I did that half acre.

Q Have you resold it?

A I'm going to trade it in possibly on another home, on another lot.

Q For another lot in the building area?

A Yes.

Q To build another home?

A Yes, sir.

Q Is that a home that you intend to move to?

A Yes, sir.

Q Have you ever tried to resell your land on the open market?

A No, sir.

Q Do you know whether or not there is a resale market for vacant land in Albuquerque?

A No, sir.

Q You do not know, is that right?

A I do not know.

Q How long has your house been on the market at Rio Rancho Estates?

A About a month.

Q Have you received any offers on it yet?

A I received a -- I have an interested party, but he has to sell his home first. It's not sold as yet.

Q And where do you intend to move?

A In the same area, one street up.

Q Panorama Heights?

A Yes.

Q Did you ever attend a Rio Rancho dinner?

A No, sir.

Q You never saw films entitled "Your West Side Story" or "Your Golden Future"?

A No, sir.

Q Do you know what was said to prospective customers at Rio Rancho dinners?

MR. FLEMING: Objection.

MR. SPRIZZO: Objection.

THE COURT: Sustained.

Q You mentioned that you were given certain brochures or documents when the salesman came to visit you, is that right?

A Yes.

Q I show you a brochure entitled "This is My Land," Exhibit 388, and ask if you have ever seen that before (handing).

A It looks familiar.

Yes, I've seen it before.

Q Did you receive it when the salesman came to visit you?

A Yes, sir.

Q Showing you pages 8 and 9, I will just ask you to read over those pages, and ask if you recognize that being in the brochures you received?

A I don't remember.

Q Do you recall the map in between pages 8 and 9?

A They gave me a map, but it was not -- I don't remember seeing this map.

They did give me a full sized map.

Q Do you recall whether or not you read what appears on page 8 of "This is My Land"?

A It's been too long ago. I don't remember.

Q Did your salesman say anything to you -- withdrawn.

When the salesman came to visit you at your home in Waterbury, did he say anything to you concerning the growth of Albuquerque?

A Yes.

Q Do you recall what he said to you?

A Oh, roughly.

He mentioned that the east side of town was building up pretty good and there was not too much land left over there and the building would be going west towards Rio Rancho and north, which is true.

Q Did he say that the only way Albuquerque could grow was to the northwest?

A No.

Q Would that have been a true statement based on your experience living in the Albuquerque area?

MR SPRIZZO: Objection.

THE COURT: Sustained.

Q You say that when you went out to Albuquerque on the tour, you found that Albuquerque was growing to the west and to the north, I believe you said, is that right?

A Yes, sir.

Q Exhibit 1075-A is a photo mosaic of the Albuquerque area.

Could you show us on that exhibit what you mean by growing to the north?

You can get down off the chair and actually point it out?

A This is Rio Rancho (indicating).

Q Yes.

A North is over here (indicating). West over here, there is building going on here (indicating) near the mountain -- where is the mountain?

Q Sandia Mountain?

A Yes.

Q Sandia Peak is over here. You can see the ski area.

This is the Rio Grande River and this is I-25 (indicating).

A How old is this map?

Q This is 1975.

A Okay. Building is out north, going north and this way, west (indicating). Up by the mountain here is just about completely filled up. Of course, out in Rio Rancho --

Q You say it is completely filled up to the mountain?

A Almost completely filled up, I didn't say completely.

Q This is the mountain here, is that correct? That is the Sandia Peak, the Sandia ski area.

A Right, whatever.

Q Are you familiar with Academy Acres in Northeast Heights?

A Yes.

Q Would I be accurate in saying that this is the general area where Academy Acres is (indicating)? Northeast Heights a little bit east of I-25?

A Yes, I would think you are right there.

Q Now, is it your testimony that there is development that extends east of the Academy Acres development all the way up to the mountain?

A Yes.

Q Would you look at this photograph.

This is Academy Acres, this is the mountain.

MR. ARKIN: If your Honor please, Mr. Kaufman is pointing to a portion of the mountains, not the base of the mountains.

MR. KAUFMAN: I am pointing to the Sandia Peak, Mr. Arkin.

THE COURT: Wait a minute.

You can't build up to the peak. Your witness said you even have to let go some of the foothills.

MR. KAUFMAN: Your Honor, we have been using the Sandia Peak as a reference. Witnesses have testified there is development right up to the Sandia Peak.

THE COURT: Come on, he never said up to the

Sandia Peak.

Q Where does the development extend?

A To the bottom --

THE COURT: Give him the pointer and let him show us.

A This is the bottom of the mountain, I'm sure. There is development almost completely up to there (indicating).

MR. KAUFMAN: Your Honor, the witness is pointing to an area up here (indicating).

THE COURT: That is what he claims it is, Mr. Kaufman. Now, don't change his testimony. That's what he says.

MR. KAUFMAN: Okay. I don't want to change his testimony.

THE COURT: All right. Don't make any comment on it.

Q Mr. Frappier, do you know what development exists in this area west of the mountain that you have talked about which is approximately parallel to the developed portion of Rio Rancho?

A Over on this area here?

Q No, right here where you said there is development.

A There is a bunch of homes there. Exactly the name of the developments I don't know.

Q Is it filled up?

A Oh --

Q Is all that land taken up?

A Quite a bit of it.

Q Do you see any development on this photograph, which is just about a year and a half ago?

A I don't see anything there right now.

Q Isn't it true that the development that you are talking about in terms of going right up to the mountains is this area of Albuquerque here, around Juan Tabo Boulevard south of Eubank Boulevard? Isn't that where the development has gone and practically reached the mountains?

A It looks like it from here.

Q And isn't it true -- do you know where Eubank Boulevard is?

A Yeah.

Q I believe Eubank Boulevard would be approximately in this vicinity (indicating).

Is that accurate?

A Eubank?

Q Yes.

A I don't know.

This map throws me all off. I can't tell.

Eubank runs north and south.

Q Is Eubank north and south?

A North and south.

Q Is Candelaria an east and west road?

A Yes.

Q Would Candelaria be in this vicinity (indicating)?

A Approximately. Probably. I'm not too sure.

Q Isn't it true that the area above Candelaria is basically undeveloped at this point?

A Possibly.

Q You may resume the stand.

Where is your car dealership located?

A In Lomas, 8601 Lomas.

Q What section of Albuquerque is that?

A Northeast.

Q Say with reference to the Winrock Shopping Center, where is your car dealership?

A It would be southeast.

Q Your car dealership is southeast of the Winrock Shopping Center?

A Of Winrock, yes.

Q The Winrock Shopping Center, I believe, is adjacent to the east-west expressway, is that right?

A Yes.

Q Is your car dealership adjacent to the east-west expressway?

A It is.

Q And the car dealership that you worked at prior to this one, where was that located?

A On Lomas.

Q Basically the same vicinity?

A A couple of blocks apart. Probably four or five blocks, approximately.

Q Did you have any trouble finding a job when you first went out to Albuquerque?

A No, sir.

Q Did you have any trouble soon after you were in Albuquerque after you got your first job?

A No, sir.

Q Was the employment market good in Albuquerque?

A It was good for me.

MR. KAUFMAN: May I just have a moment, your Honor?

(Pause)

MR. ARKIN: Can you point the machine in this direction so I can see it.

MR. KAUFMAN: Sure, but I don't think you are going to be able to see it right here.

THE COURT: Why don't you come up here. The jury wants to see it.

MR. ARKIN: It is not in evidence.

THE COURT: I know it is not.

It is going to be, isn't it?

MR. ARKIN: I don't know.

(Pause)

Q Mr. Frappier, did you ever advise Rio Rancho Estates that you were having extreme financial difficulties and that you were out of work and unable to get a job?

A No, sir.

Q Can youcome down the witness stand and -- that is your name, is that correct?

A Yes.

Q Would you just read starting right there (indicating).

A That's not true. I didn't have any financial problems.

Q Okay, you can resume the witness stand.

You never advised Rio Rancho Estates that you were in financial difficulties?

A No, sir.

Q You were never out of work?

A No, sir.

Q You were never unable to get a job?

A No, sir.

Q Were you ever unable to make your monthly payments as they came due?

A No, sir.

MR. KAUFMAN: Can this be marked as 2002.

(Government Exhibit 2002 marked for identification)

xx

MR. KAUFMAN: Your Honor, I would offer that part of the microfiche that deals with what was displayed on here. We can substitute a hard copy for it once it is made.

MR.SPRIZZO: We would object to it.

I would like to address myself at the side bar.

(At the side bar)

MR. SPRIZZO: First, can I see it?

MR. KAUFMAN: Sure.

MR. SPRIZZO: Can I read it?

MR. KAUFMAN: It was on the screen just for you.

(Pause)

MR. ARISOHN: Do you have a hard copy of it?

MR. SPRIZZO: No, I didn't see the hard copy of it.

MR. KAUFMAN: That was not part of the hard copy that you turned over.

MR. SPRIZZO: I know what my objection is, Judge.

My objection is that any information contained in the company's files which is ostensibly received from a customer is not admissible as a business record, because there is no duty to report, as I understand the rule, with respect to business records.

The business record rule only applies to notations --

THE COURT: Is this a statement made by the witness or made by an employee of the company?

MR. KAUFMAN: It appears as if it is a statement made by an employee of the company. It is on a company form typed in saying, "HSO is in extreme financial difficulty, is unable to get a job, hopes to get one by Saturday."

THE COURT: There is a statement under oath here he never said it.

I sustain the objection.

(In open court)

CONTINUED CROSS EXAMINATION

BY MR. KAUFMAN:

Q Mr. Frappier, I believe you just testified before that you were never behind in your payments, is that correct?

A Not as far as I know.

Q Do you recall receiving letters from Rio Rancho Estates saying that you were delinquent in certain sums of money?

A My wife mentioned it to me yesterday is when I found out about it.

Q Excuse me, I didn't hear.

A Pardon?

Q I didn't hear what your answer was.

A My wife did mention that to me yesterday. I just found out about it yesterday.

THE COURT: You have got to keep your voice up. I am sure the jurors can't hear you.

MR. KAUFMAN: May this be marked 2003.

(Government Exhibit 2003 marked for identification)

xx

Q I show you what has been marked as 2003 for identification, and ask if you recall ever receiving that?

(Handing)

A I have never seen it. My wife says she had -- she had got a late notice in the mail.

Is this it?

What's this $162?

(Pause)

A I have never seen that myself.

Q Is your wife here today?

A Yes.

Q Do you know whether or not this is a letter that your wife has received?

A I don't know.

MR. KAUFMAN: Your Honor, we would ask that the wife be made available.

THE COURT: Yes. Produce the wife.

MR. SPRIZZO: She is in the witness room.

THE COURT: All right.

Q Mr. Frappier, I believe you testified that when you went on your fly and buy tour to Albuquerque you were picked up at the airport in an AMREP bus, is that right?

A Yes, sir.

Q And you took that bus from the airport up to Rio Rancho Estates up Coors Road, is that right?

A Correct.

Q Did you see a lot of vacant land while you were driving up Coors Road?

A Yes.

Q Are there a number of subdivisions in the vicinity of Coors Road?

A At that time?

Q Yes.

A No.

Q Are there a number of subdivisions there now?

A No.

Q Is there a lot of vacant land still on Coors Road?

A Yes.

Q And that is on the west mesa in Bernalillo County, is that right?

A Correct.

Q Closer to Albuquerque than Rio Rancho is?

A Kind of midway, I would guess. I don't know for sure.

Q You pass it on the way to Rio Rancho, right?

A Pass what? I didn't understand that.

Q You pass this vacant land and the developments on Coors Road on the way to Rio Rancho?

A Yes, yes, correct.

Q Did you ever go to a sales presentation of Rio Rancho in Albuquerque?

A No, sir.

Q Did you ever go to a lunch or dinner where they had a lot of people in attendance with somebody giving speeches from the front of the room?

A No, sir.

Q I gather from your testimony, then, you have never been in a Rio Rancho sales situation other than one-on-one with a salesman, is that correct?

A That's correct.

MR. KAUFMAN: Your Honor, we have no further questions of this witness, though we would like to have the wife available.

MR. SPRIZZO: Your Honor, we don't plan to call her because her testimony would be cumulative, but she will be available for them if they want to call her as part of their case.

THE COURT: You may interview her, if you wish, during the luncheon recess

MR. KAUFMAN: We will.

REDIRECT EXAMINATION

XXX BY MR. SPRIZZO:

Q You were asked some questions on cross examination about whether you were ever unemployed or experienced financial difficulty.

As a matter of fact, is it not true that your financial condition has improved considerably since you moved to Albuquerque?

A Almost doubled, yes, sir.

Q And you are making more money as a car salesman in Albuquerque than you were making as a mechanic in Waterbury?

A Yes, sir.

Q Why is that?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Business very good selling cars in Albuquerque, isn't that true?

MR. KAUFMAN: Objection.

THE COURT: Sustained.

Q As a matter of fact, you have had no financial difficulties since moving to Albuquerque?

MR. KAUFMAN: Objection.

THE COURT: That is a repetition of the first one that was allowed in.

Q You have not had any financial difficulties, is that correct?

A That's correct.

Q You said when you drove down Coors Boulevard before you saw a lot of vacant land south of Rio Rancho? Do you recall being asked those questions?

A On the west side?

Q You don't have any knowledge whether any of that land is available for development, do you, Mr. Frappier?

A No, sir.

MR. SPRIZZO: I have no further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: We will adjourn for lunch. Return at 2:00 o'clock.

(Luncheon recess)

a pm

AFTERNOON SESSION

2:00 P.M.

(In open court - jury not present)

MS. HYNES: The government has an application, your Honor.

In light of your Honor's ruling on the motions at the close of the government's case and in light of your Honor's decision with respect to Mr. Friend, and in particular the language in the decision which states that the jury could infer that there is evidence, existence of a scheme, a scheme to defraud, that was charged in the indictment, during the course of the grand jury investigation there were subpoenas issued and at various times the corporations came in and interposed an attorney-client privilege with respect to various documents.

Various judges sitting in the Part I section ruled on those documents. Some of the documents were held privileged, were put under seal, and filed with the Court until such time as they might be released and the privileged be waived.

At this time, our application is that the documents that have previously been held privileged be turned over. I would suggest that they be turned over to your Honor for a ruling as to whether they in fact relate to the facts in this case, and if they do that they should be turned over, that the privilege at this point is waived because the cases are quite clear, beginning with Clarke v. United States, a Supreme Court case, that the attorney-client privilege does not cover advice sought by the client to serve him in the commission of a fraud, and that is true even if the attorney who is the person whose advice is sought has no knowledge of the fraud and is not a participant in the fraud.

Under the cases that the -- leading cases, Clarke v. United States, they have been set forth in a brief filed pretrial by the government. The original brief filed by the government in opposition to the motions by the defendants beginning on page 118 through 123, there is a discussion of those cases.

The government's application is that any documents that were withheld either during the grand jury proceedings or at any other time on the basis of attorney-client privilege be given to your Honor and your Honor should examine them. If they deal with the facts in this case they should be turned over.

THE COURT: Is that the same argument made to the judges in Part I?

MS. HYNES: No, at that time -- the burden here is a prima facie case must be made out there is a fraud. Having gotten past motions, whether there is a prima facie case there is a fraud, we didn't try to make that argument at the time, we were in the middle of the grand jury proceeding and had no basis on which we could get sidetracked in that sense so we didn't even attempt to argue whether there was a fraud or a prima facie case.

Our argument only went to whether the judges were familiar with the standards of what documents might be covered by attorney-client privilege, and it had nothing to do with whether they were in furtherance of the commission of a scheme to defraud. We didn't feel we were in a position to argue that or be able to support it.

MR. ARKIN: The point is, whatever your Honor may have found with respect to the case which now remains, you certainly did find Mr. Friend was not part of any scheme, and that is why he was dismissed.

That being the case, I don't see how communications to and from Mr. Friend, or lawyers working under his direction, could be found to have been furtherance to any scheme. Your Honor ruled that is not so. That is the point.

THE COURT: That isn't the point she is making.

The point she is making is by denying the motions to dismiss I found the government has made a prima facie case.

MR. ARKIN: Not involving Mr. Friend.

THE COURT: Involving the corporations, and the corporations are the ones who were claiming the privilege.

MR. ARKIN: But the point is the communications she wishes to have disclosed are those to and from the attorney who has been dismissed as not having been part of the scheme.

If the scheme which your Honor found prima facie did not encompass Mr. Friend, as I understand the rule--

THE COURT: That isn't what she is asking for. She is asking for documents which the corporations say are privileged, which are their papers.

MR. ARKIN: But the point is that they involve communications with the lawyer who was dismissed.

THE COURT: Her point is the cases state if they are in pursuance of the scheme of which the lawyer know nothing about they have lost their privilege. That is what I held. Friend had no knowledge of a scheme on the evidence produced on this case.

MR. ARKIN: If he had no knowledge of the scheme --

THE COURT: That is right.

MR. ARKIN: The communications to him by definition would seem to me to be irrelevant, your Honor.

THE COURT: I am sorry, you better do some research overnight.

MR. SPRIZZO: The Clarke says not that their burden is satisfied by a showing of fraud. They must also show -- the law is clear the burden is upon the party contending the exception.

One, fraud, and two, the communications were in furtherance of fraud. They made no showing and your Honor made no finding these communications with the corporations were in furtherance of the fraud. In fact, your Honor's acquittal of Mr. Friend tends to suggest the communications with Friend were not in furtherance.

THE COURT: That is not so.

MR. SPRIZZO: Aside from that argument, a finding of fraud is not sufficient to do away with the attorney-client privilege. You must also find that the client was seeking out the advice of the attorney for committing the fraud and that was not shown.

THE COURT: Will I find in the pretrial briefs a discussion of this point on the defendants side?

MR. ARKIN: You will not find a discussion in the briefs submitted to your Honor. There were briefs we submitted to the Part I judges over the past two and a half years, but they wouldn't go to this point because we did not have the government's case finished at that time.

THE COURT: Now you have it.

MR. ARKIN: Yes.

THE COURT: How much time do you want to give me something on it? I assume you just don't want me to rest on on your statement, Mr. Sprizzo.

MR. SPRIZZO: No, I think there may be some discussion of the point in our brief. I don't have a sharp recollection. We may have discussed it in passing because it was not important, but we would like to brief it again in two days.

THE COURT: All right. Friday morning.

MR. SPRIZZO: My partner disagrees with -- me.

MR. FLEMING: When do the prosecution lawyers need the documents? Putting the case together with people from Albuquerque is not easy.

THE COURT: I assume Mr. Lavinsky or his office must have done something on this point.

MR. ARKIN: Mr. Lavinsky is working with us to prepare witnesses flying in from Albuquerque, and that is why he is not in court today.

THE COURT: He was the one who raised questions of privilege, as I recall. He introduced some briefs. I remember that. I don't remember now the details of all the briefs I have read on this case. I will give you until Friday at 10:00 o'clock.

MR. FLEMING: I was going to ask until Monday.

THE COURT: That is a little too late, because I have to work on it over the weekend.

MR. FLEMING: My point was the time the government needed the documents.

MS. HYNES: Without having them I don't know, but the witnesses are being called and we might need them.

THE COURT: None of these documents would go to these witnesses.

MS. HYNES: I agree. But I don't know what witnesses are going to be called from here on in.

THE COURT: Friday at 10:00 o'clock.

MR. DEVORKIN: One other matter. I got three lists this morning your Honor requested the defendants to provide with regard to the experts and the documents their experts would rely on.

Taking Mr. Godfrey's list, there are a lot of documents listed on here without any specification at all of what they are.

For example, this is a three-page list with sixty items, some are documents and some just factors in the Albuquerque areas relying upon, but No. 44 is "Publications from Bureau of Business Research, University of New Mexico."

No. 45 is Economic Projections by UNM and Others.

THE COURT: That is not the list I was thinking of, Mr. Arkin.

MR. ARKIN: Perhaps your Honor should look at the entire list.

THE COURT: He just read one to me and it is obvious that doesn't comply with my direction.

MR. ARKIN: There are many documents on the list.

THE COURT: He is now pointing out the ones which he says you did not comply with. It is perfectly obvious that the one he just read to me does not comply with the directive.

MR. ARKIN: If your Honor please, what we did, so the record may be made clear, was I had somebody call Mr. Godfrey, and he read over the telephone from Albuquerque to New York all the items upon which he would rely in rendering any opinion which he was going to render.

The list is a very compendious list. We tried to be complete. If there are items not clear or not complete we will go further if your Honor directs us.

THE COURT: You will have to, because that's the whole point of giving documents to the government so they will be in a position to cross examine your expert.

If he is relying on communications from the University of New Mexico, they are entitled to see those communications, not just be given a catch-all category saying communications from the University of New Mexico. That's meaningless. You wouldn't cross examine a witness on that presentation, would you, Mr. Arkin? You would be yelling like a stuck pig if that's what they gave you.

MR. ARKIN: I don't yell very often.

THE COURT: No, but you would anyhow.

MR. ARKIN: I would ask if there is any further definition we can have of those documents or he will not rely on those particular documents.

THE COURT: All right. Talk with Mr. Arkin after 5:00 o'clock.

MR. DEVORKIN: Yes, your Honor.

THE COURT: Call the jury in and put a witness on the stand.

(In open court - jury present)

THE COURT: Next witness.

MR. ARKIN: The defense calls Mr. Jack Graham.

HUGH J. GRAHAM, called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

XX BY MR. ARKIN:

Q Are you also referred to as Jack Graham?

A Yes, sir.

Q Where do you live, sir?

A Albuquerque, New Mexico.

Q How long have you lived there?

A Most of all my life, forty-four years.

Q Are you a native New Mexican?

A Yes, sir.

Q What is your present occupation?

A I am president of Albuquerque Federal Savings & Loan Association, New Mexico's oldest and largest federally insured savings and loan.

THE COURT: We got that plug in. Now let's get on.

Q What is a savings and loan association, Mr. Graham?

A A savings and loan association is a savings and loan bank that was chartered in 1934 by the federal government to provide residential home loans.

Q What is your educational background, briefly?

A I was educated in the schools of Albuquerque. I went to the University of New Mexico and received a degree, and I have a masters degree at the Harvard School of Business Administration.

Q How long have you been with the Albuquerque Savings & Loan Association?

A Since November of 1962.

Q Do you have any proprietary interest in that organization?

A No, sir.

Q Does the Albuquerque Federal Savings & Loan Association have an interest in a company which is called Amdec?

A Yes, sir. It's a wholly-owned subsidiary of Albuquerque Federal.

Q What's Amdec?

A Amdec is a service corporation that was set up by the federal government to enable the savings and loans to do business other than what was under their original charter.

Q Amdec is an acronym for what?

A Affiliated Mortgage & Development Company.

Q In what activities does Amdec engage?

A Land acquisition and development with several builders and contractors in the area for building residential homes.

Q Is Amdec engaged in any land development on the northwest or west side of Albuquerque?

A Yes, sir.

en dt.

Q What project, if any?

A It's a project called Taylor Ranch, which is approximately 1500 acres. It's a master plan subdivision development.

Q Which is located where?

A In the northwest part of Albuquerque, about -- you haven't been there so --

Q Yes, I have.

A It's west of the river, north of the intersection of Highway 40.

Q In relation to Rio Rancho where is it?

A It's about 12 minutes from the Rio Rancho golf course.

Q Going due south?

A Going due south, yes, sir.

Q When was it that you first had contact with Rio Rancho in your capacity as an officer of Albuquerque Federal Savings & Loan?

A About 1964.

Q Under what circumstances?

A One of the builders that was asked to build the new model homes for Rio Rancho went it first started --

Q Who was that?

A Pride Homes. I was construction loan officer at the time and they had developments going in the south valley, in the Northeast Heights, and they were asked to go out to Rio Rancho, and since we were giving them their line of credit, why, we went out to inspect Rio Rancho to find out whether or not we would be willing to make construction loans in the area.

Q What happened?

A Pride Homes at that time we felt was overextended and we felt that it was not a well-planned idea for themselves, and in looking at Rio Rancho in particular at that particular time we felt that based on our policy of not pioneering residential development, that we were a small savings and loan, we couldn't make construction loans to Pride.

Q That was at that time?

A Yes, sir.

Q To your knowledge, did Pride ever have any connection to Rio Rancho or AMREP?

A I think they built the spec houses, yes.

Q But it's not a part of the AMREP company?

A No, no, it was a local company.

Q When was your next contact with Rio Rancho? I am talking, of course, in your capacity as an officer of Albuquerque Federal Savings & Loan.

A Approximately, I guess around 1968.

Q What were the circumstances of that contact?

A Well, we had not done any financing of Rio Rancho, yet we were the only savings and loan within the area and people that had moved out to Rio Rancho and built homes were used to savings and savings and loans associations, so they picked out Albuquerque Federal for a majority of their savings, and at that time we started knowing the Rio Rancho name and the Rio Rancho zip code.

Q Did the bank reassess its position in respect to loans?

A Yes, we definitely reassessed our position because we realized that Rio Rancho was becoming a fast growing community. We were obtaining a lot of savings from Rio Rancho residents, and we felt that the growth of Albuquerque has to be to the northwest because of the land problem and that that would be one of the best areas that we could go into in the path of development.

Q Did the bank commence making residential mortgage loans to Rio Rancho?

A Yes, we did.

Q Going back to 1968 and 1969, what were the terms of the mortgage loans you were making at Rio Rancho?

A We were conservative and cautious and the majority of the loans that we made, and there weren't too many of them because a lot of people bought their homes for cash, but the majority of the loans were between 66-2/3 to 70 per cent of our appraisal.

Our interest rates were higher than we were charging in the Albuquerque market because it was a newer area, and we tried to keep the term of the loans to about 20 years.

Q Since that time --

THE COURT: When you say your interest raate was above what your normal rate would be can you tell us was that a half per cent, a quarter per cent, or what?

THE WITNESS: Sir, approximately a half per cent.

THE COURT: Go ahead.

Q Since that time has your bank continued to make mortgage loans at Rio Rancho?

A Yes, sir.

Q At the present time, talking about now, 1977, or year end 1976, how much in mortgage loan money is outstanding in Rio Rancho development?

A We have close to 14 million.

Q About how many loans altogether?

A Approximately 800.

Q Are all of those loans in Rio Rancho in the developed area of Rio Rancho?

A Yes, sir.

Q Throughout the entire developed area of Rio Rancho?

A Yes, sir. There are several areas of Rio Rancho.

Q Several units?

A Yes, sir.

Q Do you have loans in all the units, to your knowledge?

A To my knowledge.

Q Can you tell his Honor and the jury why it is that your loans have been restricted to the developed area of Rio Rancho?

A We are a federal home loan bank and our charter says that we can loan on housing, and so consequently our charter is restricted to lending on housing for people , not on undeveloped land.

Q Have your lending policies or loan policies, speaking of the savings and loan associations, with respect to Rio Rancho changed since your initial loans?

A Yes. As I stated originally we had a very low ratio to appraisal, low maturities, and approximately half a per cent higher interest rate.

At the present time Rio Rancho has the same rates as Albuquerque. We can lend up to a 95 per centloan in Rio Rancho and up to 30 years.

Q So the interest rates and the amount you loan are favorable to central Albuquerque?

A Yes, sir.

Q They are comparable to central Albuquerque, is that correct?

A Yes, sir.

Q When you speak of appraised value of homes and lots do you have any knowledge of the relationship between the selling price and the appraised value?

A At the present time?

Q Yes, sir.

A When you make a 95 per cent loan and you have a sales binder then your appraisals better be most of the time what that sales price is, and at the present time the majority of the houses in Rio Rancho are being appraised at what they are selling for.

Q Which would include, of course, land?

A In the appraisal you appraise the land and the building, make a deposit, and take a percentage for your loan.

Q What were the reasons, or the reason, I should say, for the reassessment of your savings and loan association's policies with respect to making loans at Rio Rancho?

A Well, as I have stated before, it's that -- if you look at this map Rio Rancho, New Mexico, is in the northwest part of our area, and that's where the population of Albuquerque has to grow. We had a savings flow, a tremendous savings flow, from Rio Rancho, New Mexico, and we felt that since Rio Rancho is in the path of progress, with a strong savings flow, people are moving out there,that we should be represented in that area.

Q Do you have a branch at Rio Rancho?

A Yes, sir.

Q When was that branch opened?

A It was opened in 1974, I believe around the end.

Q You have already given reasons about reassessing policies with respect to loans. Are there any additional reasons you can tell us for establishing a branch at Rio Rancho?

A Rio Rancho, New Mexico, is in the northwest part of, you could call it Albuquerque, it's in Bernallillo County, and in setting up the reasons for branching you have to justify a need to the Federal Home Loan Bank.

We don't give branches just because we want branches.

Q Did you make an application to the Federal Home Loan Bank then?

A Yes, sir.

Q Was that application approved?

A Yes, sir.

Q Did you advance certain reasons in that application in order to get permission to set up your branch at Rio Rancho?

A Yes, sir.

Q What were the reasons you advanced to the federal agent in order to get permission to set up the branch at Rio Rancho?

A Several. First it was going to be an area of need because the population was starting to shift to that area, to that part of the country. The northeast part of Albuquerque is approximately finished as far as residential development is concerned in the next five years. There is only one place the population of Albuquerque could shift to, it's the Northwest Heights, and Rio Rancho, New Mexico, was giving us strong savings flows.

Another reason is there was a commercial bank there getting all that money and a lot of the pepole had indicated to us that they were keeping the money in other areas of the country they were from unt[illegible] we could provide them with the service.

We also felt that the area was growing so rapidly that it was an excellent mortgage area, and it was in the path of development for the future population growth.

Q Is Rio Rancho growing rapidly compared to other portions of New Mexico?

A Yes, sir.

Q How would you compare its growth with other areas of New Mexico with which you are familiar?

MR. KAUFMAN: Objection.

THE COURT: Overruled.

A Will you repeat the question, please?

Q How does the rate of growth of Rio Rancho, Mr. Graham, compare with the rate of growth of other portions of New Mexico with which you are familiar?

A Well, they use the title the fastest growing town in the west. That's a joke. Fastest growing gun of the west. But Rio Rancho is about double, I believe, the growth of Albuquerque at the present time.

Q The rate of growth you mean?

A The rate of growth, yes, sir. That was also stated in our Federal Home Loan application. I believe Albuquerque's rate of growth was approximately 8 per cent, and as near as we can determine the Rio Rancho rate of growth was about 16 per cent.

Q You testified a few moments ago Amdec had an interest in Taylor Ranch, is that correct?

A Yes,sir.

Q Do you have any proprietary interest of any kind in Amdec?

A No. It's a 100 per cent wholly-owned subsidiary of Albuquerque Federal.

Q In which you have no interest?

A That's right.

Q I take it only the people who have savings deposits have an interest in the bank, is that correct?

A The people that have savings deposits and we make loans to, our voting stockholders in the bank.

Q There are no shareholders?

A No.

Q Do you hold any office in Amdec?

A Yes, I am president.

Q What's Amdec's participation, if you will, in the Taylor Rancho project?

A Amdec has a joint venture with a very large housing developer, Dale Bellamah Corporation on a 50-50 joint venture basis. We are providing the financial means, and they are providing the development expertise, and together we are developing about a 1500 acre master plan subdivision.

Q When did Taylor Rancho open?

A We had our opening I believe in April of this year.

Q You mean April of last year?

A Well, yes, right.

Q There is no April of this year.

THE COURT: We hope there is going to be one.

A April of last year.

MR. ARKIN: There has been none, your Honor. You are perfectly right.

Q What were the reasons which Amdec and Dale Bellemah had for developing or starting a project at Taylor Rancho?

A Amdec is also involved with Dale Bellemah and some other contractors in the Northeast Heights of Albuquerque. I would say between Amdec and Dale Bellemah the joint ventures we have probably a majority are in the Northeast Heights of Albuquerque where land is controlled, and we wanted to begin our development on the northwest side of Albuquerque because once again, as I explained to you, about the population problems of Albuquerque, the northwest has to be the area that it will be growing to, and it already is growing there.

It's in the path of progress, and the only area we could find large enough to develop a full master plan concept happened to be an area called Taylor Ranch, which is named after the gentleman whose ranch it was.

Q Why must the Albuquerque population move to the northwest, sir?

A Well, Albuquerque is a strange town.

MR. KAUFMAN: I object to the question, your Honor.

THE COURT: Overruled.

MR. KAUFMAN: May we approach the side bar on an application?

THE COURT: No.

A Albuquerque is a strange town. This isn't a very good map.

THE COURT: Pardon our laughter, but you are the second witness in a row who said that.

THE WITNESS: Can I step down?

THE COURT: Yes. Take the pointer, too.

A Obviously, this is the Rio Grande River.

This area here --

Q Referring to Exhibit 1075 in evidence?

A This area is mountain range. This mountain range is approximately 5,000 feet above the terrain of Albuquerque, New Mexico. In fact, Sunday I took my kids skiing only 18 minutes from home.

MR. KAUFMAN: May the witness be instructed to answer the question.

THE COURT: Since you made that objection with a big grin on your face, Mr. Kaufman, I overrule it.

A Number one, you can't build up against the mountain. Right here is a subdivision called Glenwood Hills. Glenwood Hslls was a subdivision that was initiated and planned before the city commission of Albuquerque, or city council, established what they call an ecological line, which is approximately 6,000 to 6200 feet.

If you look here, the development along this line -- someone has been here before -- but the development along that line is not even at the base of the mountain. This area in here is still good land. But they have established that at 6200 feet you can't build any more houses. That's number one.

Consequently, the mountains have stopped development that way.

This area down in here -- and this golf course, by the way is on a military reservation, and this happend to be Sandia Reservation. Kirtland Air Force Base, Manzano, and if you all remember the atomic bombs in the old days, the New York Times had an excellent article, that's where they were supposedly stored, but we cannot get there.

In other words, this is a complete military reservation with the exception of some area down in here which is still owned by the state since the University of New Mexico was a federal grant college.

Consequently, this area cannot be developed at the present time. This is our airport here which is being hemmed in by residential development.

This area cannot be developed, so the north side is a strange animal, too, in that it looks like there is a lot of land here. Someone has been there again. But this area right here is the only land available --

Q How much is that, Mr. Graham?

A Before I answer the question, let me see where I am. This is Whyoming, and this is the Albuquerque Boys Academy. The reason I said that is this was all owned from the Boys Academy approximately a line going across here, it's owned by the Boys Academy all the way up to the top of the mountain.

The land above is in this area here is called North Albuquerque Acres. North Albuquerque Acres is an area that has a lot of, I believe they are acre lots. Many, many people bought them, many, many years ago, and it's very difficult to develop any clear title land. Dale Bellamah has probably developed the last of it, and he has developed about three subdivisions. He just recently bought the airport and that's the extent of it.

Above North Albuquerque Acres is Sandia Pueblo Indian reservation. So for all intents and purposes, the development of Albuquerque has been stopped on the east with the ecological line, number one, stopped on the south because of the federal ownership of land and state ownership of land at the present time, at the north by North Albuquerque Acres, you see all these streets in here, and it's very difficult to put the stuff together, and then further north by the Sandia Pueblo Indian land.

Consequently, as Albuquerque grows the only place Albuquerque can grow, and we have known this for a long time, is to the northwest.

This area over here -- and you have to understand something about Albuquerque, New Mexico, is that we were here before you were here. Coronado came up the Rio Grande River in 1540. The Spanish gave this land in what we call land grants, miles and miles and miles of land grants. This particular area here is called Paharito land grant, and it was also subdivided many, many years ago into five, I believe it is five acre tracts, and it's very difficult to get this land into developable state.

This area in here, and I can't quite say that that's all the Atrisco land there, but it had such problems, the heirs of the Atrisco family, that they finally set it up into a corporation called Westland Corporation and they are in the process of everybody that had an interest in this family tree way back I guess in the 17 or 1600's has stock in Westland Corporation.

The only area that we could possibly get in this particular -- because you have got Rio Rancho here, Paradise Hills, a little sheep ranch up there -- the only area we could get was right in this area here. We bought 1,000, about 1500 acres. In fact, we are still acquiring on a 40 to 50 acre tract basis trying to keep a continuity of development.

(Continued on next page.)

2a.pm

Q You can resume the stand, sir.

Previously, Mr. Graham, I asked you the question as to how much land was available for residential development in the Northeast Heights of Albuquerque.

A Well, we took a land inventory last month, and the nearest my estimate would be approximately 2500 acres.

Q Is that a contiguous 2500 acres, sir?

A No.

Q In your recitation, sir, did you mention the Simms property?

A Yes.

Q Does your land inventory include an analysis or -- an analysis of the Simms property, too?

A Yes, it does.

This map is a little bit out of date. It doesn't show my subdivisions on there. But we have approximately 400 acres -- when I say "my," Albuquerque Federal Amdec and Joint Ventures -- we have approximately 400 acres in the Simms area.

There is approximately another five or 600 acres, I believe, and it belongs to the Simms -- to the Boys Academy trust, and part of it is in what we call the Peno Reservoir drainage area, and we are not quite sure what the people that are in charge of the drainage are going to allow constructed there.

Our subdivision is right across the street of a dam. Everything in back of that dam is also included in that estimate.

Q Mr. Graham, would it have been accurate in the mid-1960's to make a representation that Albuquerque's future growth pattern was predestined that it must take place to the northwest?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

Q What is that answer, sir?

A That's an accurate statement if we grow.

Q You mean, meaning if people have babies and things like that?

THE COURT: Or people come in.

Q Or people come in?

A Yes, sir.

Q Is that statement or would that representation be accurate today?

A Very definitely.

Q Is that prediction coming true today?

A Yes.

Q Is Taylor Ranch a competitor of Rio Rancho?

A Very definitely.

Q How many homes have been built at Taylor Ranch since its inception?

A We have over 135 homes that are under construction and we have 100 -- when I say "we," the builders that are in Rio Rancho -- and they have moved in 80 families already. This was starting in April. And they have 115 houses sold. There are two builders in there now.

Q Has your Taylor Rancho development met its projections?

A It's approximately a year and a half ahead of its projections.

Q Are you familiar, sir, with the advertising literature which the Taylor Ranch puts out?

A Yes, sir.

Q WUat does the Taylor Rancho promotional literature say about Albuquerque's growth?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. ARKIN: One moment.

(Pause.)

Q Do you know what the AIDS-IFA is?

A Yes, sir.

Q What is it?

A It stands for Albuquerque Industrial Development

Service, Industrial Foundation of Albuquerque.

Q What is that organization?

A In the early '60's, the businessmen of Albuquerque got together and set up a foundation and raised over a million dollars to bring industry in to increase the economic overall growth of the Albuquerque area.

Q Is the purpose of that organization, then, to attract and expand industry to the Albuquerque area?

MR. KAUFMAN: Objection to the leading, your Honor.

THE COURT: Reframe the question.

MR. ARKIN: All right.

Q What is the purpose of that organization, sir?

A It's to bring in -- to bring industry into the Albuquerque area for economic expansion.

Q Do you have any office in that organization?

A I'm a director of AIDS.

Q Will you tell his Honor and the jury who else is on that board with you? Not all of them, just some of them.

A Well, a majority of the business leaders in Albuquerque.

The vice president of the telephone company, Jim Clorin --

Q Why don't you just describe them by position as opposed to names?

A Okay.

The vice president of the Bell Telephone Company is on it, president of Publishing Services Company of New Mexico is on it, vice president of -- they call it a new name -- New Mexico Gas Company is on it. Those are the utilities represented.

A majority of the banks are on it, the president of Albuquerque National Bank is on it. We have another bank that keeps changing presidents. I'm not sure about that one.

I believe we are the only savings and loan represented on it now.

The director of I believe Levi Strauss, G.T.E. Linker.

How many more do you want?

And then other various business interests.

Q What about anybody from the university?

A The University of New Mexico?

Q Yes, sir.

A I believe that the president is an honorary director, but I'm not sure about that.

Q Anybody from Rio Rancho?

A Floyd Bailey. In fact, I think he was just vice president.

Q Do you know of your own knowledge whether Rio Rancho has participated with AIDS in attracting industry to the Albuquerque area?

A Yes.

Q What has Rio Rancho done to assist in attracting industry to that area?

MR. KAUFMAN: Objection. I don't think this is the proper witness to testify on that score.

THE COURT: If he knows. He says he is a director of AIDS.

A They agreed to donate land to bring industry in.

Q Have they, to your knowledge?

A Two that I know of, one of them that I was involved in. One of them is the Granedetti Company, and the other one was at the time called Ampex.

Q By the way, how long have you been a director of AIDS-IFA?

A This is only my second year.

Q And previous to that did you have any relation to AIDS-IFA?

A Yes. I was the director of the Chamber of Commerce and vice president of the Chamber of Commerce.

Q Of Albuquerque?

A Of Albuquerque. And a member of the executive board of the Chamber of Commerce.

Q Does the Chamber of Commerce have any relationship to AIDS-IFA?

A The Chamber of Commerce funds AIDS, the majority of the funding.

Q It pays its way?

A Right.

Q Do you know whether AIDS-IFA has ever expressed a view publicly as to the direction of Albuquerque's growth?

A I guess you are talking about Jim Garvin's film script called -- what is it -- Albuquerque -- Albuquerque is Framed.

He has a film script that he has been given many years illustrating the same thing that I have been explaining here.

Q By framed, what does he mean, if you know?

A Well, framed means --

MR. KAUFMAN: Objection, your Honor. What did Mr. Garvin mean?

MR. ARKIN: What did AIDS' presentation mean?

MR. KAUFMAN: Your Honor, may we approach the side bar on this?

THE COURT: The objection is sustained.

Q Do you know, sir, what the inclusion of the AID-IFA presentation has been?

MR. KAUFMAN: Your Honor, I object.

THE COURT: Is this the presentation we have seen here?

MR. ARKIN: No, sir, it is not.

THE COURT: I sustain the objection.

Q Well, have you ever seen such a presentation, sir?

A Yes.

Q How long ago was the first time you saw it?

A Oh, I saw it -- probably saw it around '68, '69, something like that.

Q Do you know if such a presentation has been given continuously in the Albuquerque area since that time?

A Yes, sir.

Q And you yourself have witnessed it?

A Yes, sir.

Q What is the conclusion given in that presentation?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

If you want to use it, bring it in and show it. Let the jury determine what it says.

MR. ARKIN: If your Honor please, I have very little more.

May I approach the side bar and make an offer of proof on this?

THE COURT: Not on this.

MR. ARKIN: May I make a proffer of proof gen;erally?

THE COURT: No.

MR. ARKIN: It will relate to two areas of my examination.

THE COURT: On this specific area of proof, the answer is, produce the film, let the jury see it and let the jury understand what it says, not have this man describe what it is.

Nobody has been able to cross examine the film or cross examine him since nobody has seen it.

MR. ARKIN: That is not the point of my proffer, your Honor.

THE COURT: That is what I am sustaining the objection on. I don't see how you get away from that.

MR. ARKIN: Might I have just one moment? I might explain it to your Honor.

THE COURT: What else do you want to produce besides that from this witness?

MR. ARKIN: Well, all we want to show in respect of this witness, your Honor -- I prefer saying it at the side bar instead of in front of the jury.

THE COURT: The other is out, so don't bring that up here when you get here.

(At the side bar.)

MR. ARKIN: Your Honor, the point is that I could clutter up the record with lots of people who have been saying the same thing as --

THE COURT: I will not take this man's description of what somebody else says. It is not subject to cross examination, neither is he.

MR. ARKIN: I am not offering it for the truth of it, only for the fact that it has been said, because one of the issues in this case is good faith.

THE COURT: I think that is improper use.

MR. ARKIN: The issue is good faith.

THE COURT: Not this man. Bring the fellow in who said it so he can be cross examined.

MR. SPRIZZO: If it is being said publicly --

THE COURT: Produce it. He is characterizing a film script. That is what he has asked him.

MR. SPRIZZO: The point Mr. Arkin made, it is not being offered for its truth --

THE COURT: I am sorry.

MR. SPRIZZO: I just want to state the reason why it is admissible.

I think it is perfectly admissible because if this is stated by representatives -- if this was being said publicly by reputable members of the Albuquerque business community, regardless of its truth, it is probative on the question of state of mind of these defendants when they made that statement themselves, and I think we are entitled to prove that it was said and it was said publicly.

THE COURT: It is so easy to produce it. You went to Albuquerque for five days. You could have brought it back.

MR. SPRIZZO: That is really not the question. We may very well choose to produce it, but on the point your Honor made that there is no right of cross examination, that is irrelevant because it is not being offered for the truth through this witness. It does not deprive it of its admissibility. We think it is perfectly probative.

THE COURT: Okay. I have excluded it and my ruling is correct for you, Mr. Sprizzo.

MR. SPRIZZO: Okay.

THE COURT: What is your next point?

MR. SPRIZZO: That's my point.

THE COURT: What is your point, Mr. Arkin?

MR. ARKIN: Your Honor's ruling has resolved it.

MR. KAUFMAN: Your Honor, I do have one thing.

This witness has been questioned de facto as an expert witness with respect to the growth of Albuquerque, yet no documents upon which he relied have been produced.

He talked about a land inventory that his bank just recently concluded. No documents have been offered.

The government requests that those documents be produced so the government can review it and, in the future, that any such witness who is going to be called to give what turns out to be expert testimony -- and I may say, your Honor, that was the basis of my objections earlier while he was being questioned -- any witness so called, the defense, the government submits, should inform the government and should provide us with the documents ahead of time.

MR. ARKIN: Mr. Arkin?

MR. ARKIN: I don't have any documents.

THE COURT: Well, he is asking about the documents this witness relied on.

MR. ARKIN: I don't have them.

MR. ARISOHN: Never saw them.

THE COURT: That isn't the point he is making. The point is, if you want to do this in the future, get the documents up.

MR. KAUFMAN: My point is, unless we get the documents for this witness and at least have an opportunity to recall him, that failure of the defense to produce those documents should result in this witness' testimony being stricken.

THE COURT: What documents? The only one I know about is the land inventory.

MR. ARKIN: And he has testified of his own knowledge.

MR. KAUFMAN: That is the one document that he specifically mentioned that we are now asking for, and any other documents that it may turn out he relied on as well.

THE COURT: Ask him if he relied on any.

MR. KAUFMAN: I intend to. With respect to the inventory, that is what we are specifically ask for at this time.

THE COURT: Okay, produce the inventory.

MR. ARKIN: If he has it produce it. I don't have it.

THE COURT: Call New Mexico and tell them to mail it.

(In open court.)

MR. ARKIN: Thank you very much, Mr. Graham.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MR. KAUFMAN:

Q Mr. Graham, where do you live in Albuquerque?

A Northeast Heights, 7408 Osuna Northeast.

Q And how long have you lived in the Northeast Heights?

A Since about -- about eight years this time.

Q Is the Northeast Heights considered the preferable area to live?

A That's right.

THE COURT: What was that word?

MR. KAUFMAN: Preferable?

THE COURT: Over what, the south portion?

MR. KAUFMAN: Over any other portion of Albuquerque.

THE COURT: Is it preferable over any other portion?

THE WITNESS: No.

THE COURT: That's what I thought. I thought the witness misunderstood your question.

Q Have you seen the Northeast Heights grow since you have been living in Albuquerque?

A Yes, sir.

Q And it is true that the Northeast Heights has grown more in terms of absolute growth than any other section of Albuquerque, isn't that correct?

A Yes, sir.

Q I believe you testified on direct examination that a statement made in the mid-1960's to the effect that Albuquerque could only grow to the northwest would have been an accurate statement; is that what you testified to?

A That's not the statement he read to me.

Q What was the statement that was read to you?

A It had a predestined growth. I think that was the word, if you want to read it back.

Q Let me read something to you, Mr. Graham, and you can tell me whether or not it is an accurate statement to make of Albuquerque in 1966.

THE COURT: From what are you reading?

MR. KAUFMAN: I am reading from Exhibit 384, "This is My Land."

Q "According to experts, Albuquerque's future growth pattern is predetermined, it must take place toward the northwest, and this is where most of the new growth activities are taking place."

Would that have been an accurate statement in 1966?

A The predetermined, I think, is an accurate statement, because of what I have said here, if we grow, which I also told Mr. Arkin.

The other part of that statement, read that again.

Q "And this is where most of the new growth activities are taking place."

A I guess you got to define "growth activities."

There was a new golf course, there was industrialization.

Q In 1966, in Albuquerque, the metropolitan area, were most of the new growth activities taking place in the northwest?

A I don't believe so. It depends on how you define "growth activities."

If you are talking about residential development, no, obviously, because it is still --

Q I am talking about residential, businesses, anything; totality of development in Albuquerque.

Was most of it taking place in the northwest in 1966?

A I would say that that would not be an accurate statement as far as the growth activities.

Q Now, when you say the first part of that statement was accurate with respect to Albuquerque's future growth pattern is predetermined --

A Predetermined, yes.

Q Over what time span are you saying that that is an accurate statement.

In other words, what I am asking you is, at what point in time will it be true that Albuquerque can only grow to the northwest?

A Based upon approximately the 2500 acres -- and this is only my opinion, I'm not the expert -- I would say that that land is going to be used up in three to five years in Northeast Heights.

I would also say in our Taylor Ranch development, we are a year and a half ahead of our projections, and about a mile from the Taylor Ranch, a mile and a half, the city is putting in a brand new golf course with residential development.

Q My question is, Mr. Graham, when will you reach that point in time when the city can only grow to the northwest?

You have said it is going to be at least three to five years before the Northeast Heights is completely developed, is that right?

A That would be my estimate.

Q That is your opinion, right?

A Yes, that is my opinion.

Q So assuming that to be true, what you are saying, then, is when that statement was made in 1966 about the only way Albuquerque can be growing, it is taking at least 14 or 15 years until that possibly may be coming true, is that right?

A That's not what that statement says.

Q It wasn't true in 1966 that Albuquerque could only grow to the northwest, was it?

A It said predetermined.

Q Mr. Graham, I am asking you a question:

Was it true in 1966 that Albuquerque could only grow to the northwest?

A No.

Q And it is not true today, is it?

A That it can only grow?

Q Yes.

A No. It still has some growth in Northeast

Heights, but very little.

Q You say you have been a director of AIDS for approximately two years, is that right?

A No, one.

Q One year?

A Yes.

Q How long have you been associated with AIDS through your involvement wiht the Chamber of Commerce?

A Let's see. I've been a director -- I went out last year, I believe, or two years ago, I was the director of the Chambers and I was a director for four years.

Approximately six years.

(Continued on next page.)

2b pm

Q Are you aware that AIDS puts out a number of brochures and booklets and pamphlets in connection with its attempts to attract business and industry to Albuquerque?

A Yes.

MR. KAUFMAN: May this be marked 2004.

(Government Exhibit 2004 marked for identification)

xxx

Q I show you what has been marked Government Exhibit 2004, which is a 252 page document put out by AIDS called "Analysis of Albuquerque, New Mexico as a corporate headquarters location."

Are you familiar with this?

A That is the black book.

Q In its original form it is in a black cover.

A Yes, I think so.

Q Can you just flip through this and see if you recognize it (handing)?

A This looks like the black book, yes.

He keeps updating it all the time.

Q When you say "he", who are you referring to?

A Jim Garvin, the executive vice-president.

Yes, I think this is the black book.

Q Do you know what AIDS has said with respect to development in the Northeast Heights in terms of how long it will take the Northeast Heights to be filled up?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

MR. ARKIN: Can we have a time?

THE COURT: Yes.

Q In 1971, do you know what AIDS was saying with respect to the time it would take to fill up the Northeast Heights?

MR. ARKIN: If your Honor please, I raise the same objection Mr. Kaufman raised with respect to my question.

THE COURT: Objection overruled.

A Do I know exactly what they said?

No.

Q Exactly or in substance, do you know what they said?

A No. I didn't write it.

Q Let me as you to read the first paragraph on page 17. Read it to yourself, please.

(Pause)

A Okay.

Q Does that refresh your recollection as to what AIDS was saying about the Northeast Heights?

A I don't remember that statement.

Q Is it accurate?

A No.

MR. ARKIN: Objection.

THE COURT: Overruled.

Q What AIDS was saying was inaccurate?

A In my opinion. They didn't ask me.

Q Mr. Graham, are you familiar with the Albuquerque Planning Department?

A Yes.

Q Do you know what they do?

A They plan.

Q In terms of Albuquerque's future anticipated growth?

A Yes. They have had so many different reports, which one are you talking about?

Q Right now I am just talking in general as to what their general function is.

A Yes, yes.

Q In reaching your opinion as to how much land is available now in the Northeast Heights, have you consulted with any of the reports put out by the Albuquerque Planning Department?

A No. The only -- when I say the 2500 acres, I am talking about land available for development.

Q Is that a written study that you or your bank has undertaken?

A No. It is just talking to the people that own the land.

Q Why don't you tell us how you reached that conclusion about 2500 acres.

A Well, we own 500 acres and Best Brand owns approximately 150 acres and Bellamah and the Albuquerque Boys Academy owns the rest.

Q And what does that total give you?

A Approximately 2500 acres.

Q Are you saying that accounts for the total ownership of all the land that actually exists in the Northeast Heights?

A No, I'm not saying that at all. I said developable land.

Q What is your definition --

A North Albuquerque Acres is not developable.

Q Forgetting about North Albuquerque Acres for the moment, what is your definition of developable land?

A Land that can be annexed to the city of Albuquerque as far as the Northeast Heights is concerned, that can be sewered and watered within the next three years and that can have clear title.

Q How do you know whether or not it can be annexed and whether or not it can have sewers in the next three years?

A Well, we have a plan we call the Tijeras 5 Intercept Sewer which is going right straight through the Academy land, and on our latest projections we went to the -- not to the planning -- we went to the environmental planning commission, which is the administrative arm of the planning department of Albuquerque, to find out what lands are available in the Northeast Heights in their land plan.

Q What did they tell you about what was available in the Northeast Heights?

A Well, our last -- our last -- the only problem that we have is -- was the sewering of the land north of Montgomery and the land east of -- I can't even point it out on this map, but the land east of Eubank, which -- that's why the development has been held up, because the rest of that land is owned by the Academy and ourselves and one small amount of it is owned by a developer Gary Sweringer.

Q I gather, then, you are eliminating all land which, in your opinion, cannot or will not have utilities on it in the next three years, is that correct?

A In the city of Albuquerque.

Q And your definition, then, of developable land does not include land outside the city limits, is that right?

A In the Northeast Heights.

Q I don't know if that answers my question.

A That is the question you asked me about, the Northeast Heights. That's what we are talking about.

THE COURT: Why don't you go up to the map and indicate what portion of the land you think should be included.

Q Mr. Graham, you have testified that there is only enough land in the Northeast Heights -- withdrawn.

You have testified there are only 2500 acres of land in the Northeast Heights capable of development and that within the next three to five years the Northeast Heights will be completely filled up, am I correct?

A Yes, sir.

Q Within the parameters of that statement, when you talk of the Northeast Heights, are you referring to land solely within the current Albuquerque city limits?

A No, because every time we develop land we annex.

They just annexed, for instance, a piece of property off of Wyoming where you have that dotted line, the last piece in the North Albuquerque Acres that can have clear title and have a contiguous development.

Q Are you including all land up to the southern boundary of North Albuquerque Acres?

A Yes. That would be San Antonio, right.

Q So your analysis includes all the land up to the southern border of North Albuquerque Acres and continuing over as far as the foothills to the east?

A Well, tramway is the breaking point and the other part of it is in Bernalillo County, not in the city of Albuquerque. And the problem with that is getting sewer and water to that area.

Q Are you aware --

A East of tramway.

Q You are talking about the area right in here, then, is that right (indicating)?

A Yes. And that is -- that's Simms property, part of it.

The majority of the land that can be developed through a water system that Sandia Heights has is, I guess, not the land that is in purple but probably where you have that purple line.

Q What I am trying to find out, Mr. Graham, is whether or not in expressing your opinion as to the amount of land that will be filled up within the next three to five years, whether or not you are including the land east of tramway eastward toward the foothills.

A No, I'm not.

One of the reasons is that that Albuquerque Boys Academy land and at the present time it is in a trust and, as you know, it goes all the way up to the mountains. It's called Bear Canyon.

Mr. Simms has not indicated to anybody that he is ever going to develop that land.

Q That does not mean it can be developed, does it?

A It can be developed if you can get sewer and water to it.

Q It simply means that Mr. Simms owns it and if he wants to sell it it can be developed if utilities can be gotten into it.

A How many acres is there?

There is the ecological line, which is right here -- let me have your pointer (indicating).

Q Are you aware of any master planning that has been done in that area?

THE COURT: When you say "that area," you mean to the right of where he held the pointer?

MR. KAUFMAN: No. To the right of tramway up to the foothills.

A You see, the foothills are 6200 feet all the way up. If that was annexed into the city, then half of that would not be developable.

THE COURT: Because of the ecological line?

THE WITNESS: 6200 foot.

Q My question is, Mr. Graham, are you aware of any master planning that has been done in any portion of that land area?

A No.

I have an old, old master plan that was done that went all the way up to almost the top of the mountain which was called Bear Canyon, which the original Academy had, but it is no longer applicable because of the ecological barrier.

Q What is the current population of Albuquerque?

A If you are talking about SMSA, which is standard metropolitan district -- whatever that is called --

Q I will take that figure.

A 19[illegible] it was approximately 265,000, and I believe that the estimate now is -- what -- 350,000.

Q And SMSA is the equivalent of Bernalillo County?

A Yes, yes.

Q And most of that is Albuquerque itself, isn't that right?

A Well, with the -- yes, right.

Q Are you aware of the report put out by the Albuquerque Planning Department in February of 1964, which is entitled "The 1985 Land Use Plan"?

A I've heard of it, but I have never read it.

Q In reaching your opinion about the amount of land available for development in other sections of Albuquerque than the Northwest, have you ever referred to the 1985 land use plan in reaching your opinion?

A No.

Q Have you referred to the 1975 plan very recently put out by the Albuquerque Planning Department?

A The comprehensive plan?

Q Yes.

A Yes.

Q You have referred to that?

A I've looked at it. I'm not -- you know, I'm not that familiar it.

As a land developer and a mortgage lender, we try to determine where we can make loans and that's where we can make them.

Q In reaching your opinion, have you taken into account the fact that the Albuquerque Planning Department in 1975 has said that just within the Bernalillo County area of Albuquerque there is enough developable land to accommodate over a million people?

Have you taken that into account in reaching your opinion, Mr. Graham?

A No.

Q In reaching your opinion, have you taken into account the fact that the Albuquerque Planning Department in its 1985 land use plan said that even the most optimistic growth projections would not utilize this land, referring to the study area, within the current century?

Did you take that into account?

THE COURT: You have to answer because the reporter can't record the shaking of your head.

A No, no. Okay.

Q I gather, then, that it is your opinion that if anyone said in 1971 that the Northeast Heights would continue to be the preferred area for land absorption during the next 15 to 20 years, that that would be an incorrect statement?

A That's what I'd say because that's what I read --

Q Would that be a correct statement?

A And in my opinion it's an incorrect statement. I think -- all right.

MR. ARKIN: Is that document in evidence, Mr. Kaufman?

MR. KAUFMAN: No.

MR. ARKIN: I don't think he ought to read from it, your Honor.

THE COURT: That's true.

MR. KAUFMAN: Your Honor, I was not referring to any document in questioning the witness.

THE COURT: You weren't? What were you holding in your hand and reading from?

MR. KAUFMAN: I was holding nothing in my hand, your Honor. I was asking the witness a question.

MR. FLEMING: Is that a representation?

THE COURT: It didn't look that way to me.

Strike the question and the statement of facts contained in the question.

Q Mr. Graham, you eliminated from your consideration North Albuquerque Acres, is that correct?

A A majority of it.

Q First, why don't you tell us what part of North Albuquerque Acres you eliminated and what part you considered, again, referring to the map.

Here, let me give you the pointer.

A Thank you.

Okay. This line coming right across here used to be called San Antonio Boulevard (indicating).

Everything above approximately San Antonio Boulevard is North Albuquerque Acres.

Right in this area right here -- if you notice, this is brand new development, if you notice where they have scratched out this area for brand new development, this right in here represents approximately 300 acres under the Bous Academy Trust (indicating).

Right in here they have set up their last subdivision that they can clear title to in sufficient amount, at least 40 acres, because your density, the city in their land use program is talking about three to an acre, so approximately there are 200 lots there left to develop that goes right across here (indicating).

That is just about the extent of the development

Q Do you know what the name of that development is?

A I've got it in my briefcase. It's a brand new development that Bellamah has. He bought the land from Ann Pickard.

Q That is Loma Del Norte.

A No. That is next to Loma Del Norte.

I believe this is part -- let's see.

This part of Loma Del Norte right here and this area goes over here contiguous to Loma Del Norte and it is a new subdivision.

Loma Del Norte was a joint venture -- across the street between Mortgage Investment Corporation and Dale Bellamah, and then they sold out and that enabled Bellamah, I think, to buy this from Ann Pickard.

Q How far west does Loma Del Norte extend?

A If this is -- yes, is Wyoming.

This area right here is part of Loma Del Norte. This is really Loma Del Norte. This is a brand new area. Is that Loma Del Norte, too?

I don't know.

Mortgage Investment is making the loans in there.

Then right next to it is a new subdivision.

Q There is development that extends west from what you identified as Loma Del Norte.

Do you know what that is?

A Well, this is part of Loma Del Norte, isn't it?

Q Does Loma Del Norte extend all the way to the expressway?

A No, no.

Well, it can't get to the expressway because this is zoned M-1, which is heavy commercial.

Q Is that part of what was once at one time part of North Albuquerque Acres?

A Yes, I believe it was.

Q North Albuquerque Acres extends northward to this solid blue line, is that correct?

A Approximately, right.

If you notice in here, Bellamah just bought the last of the land, 250 acres, which the Coronado Airport is on.

I think there is approximately 250 acres in that Coronado Airport.

Q And you excluded from your consideration all the rest of North Albuquerque Acres, is that correct?

A Yes.

Q Okay, you can resume the witness stand, Mr. Graham.

Q What was your reason for excluding the rest of the North Albuquerque Acres?

A Historically speaking, they have not been able to develop enough land packages to put together to develop because of the -- I don't know how many hundreds of property owners all over the country, principally in California.

Q North Albuquerque Acres was sold off a number of years ago to numerous people out of state, is that right?

A Yes, sir.

Q And was that approximately 40 or 50 years ago, if you know?

A I was only born 45 years ago.

THE COURT: Nothing existed before that date, Mr. Kaufman.

Q How does the fact that North Albuquerque Acres was sold to a large number of people out of state make it difficult for development at this time?

A Well, you got problems of what we call the tax deeds where they have not made -- they have not paid their taxes, the land has gone back to the state.

You've got problems where you can't contact Aunt Judith because Sister Jane was on the deed, and, consequently, the land just lays foul.

The last development, Loma Del Norte which you referred to and the new Bellamah development, was the result of a tax law which we had many years ago where you go and pay the taxes and get the land and the people that put this together, Ann Pickard and some others, were women that made it -in the early forties did that, because they had access to the tax records.

You can no longer do that now. You have to put the land up for auction at public auction.

Q And correct me if I am wrong, but is it your testimony, then, that North Albuquerque Acres cannot or would be difficult to develop because of the fact of a large number of out of state absentee owners?

A Definitely.

Q Are you aware that Rio Rancho Estates is sold to a large number of out of state absentee owners?

A Yes.

Q You testified that all your bank's loans at Rio Rancho Estates are in the developed areas of certain units.

A Yes.

Q Do you know what those units are?

A No.

Q Do you know the names or numbers of them?

A No. All I know is our criteria has to be a county dedicated road, have to have utilities provided.

Q What do you mean by a county dedicated road?

A It means a road -- a plat that has been approved by the county.

Q And a road that is up to county specifications?

A Yes.

Q What type of road is that in Sandoval County?

A Well, we hope it's a 60 foot graded road. It does not require paving.

Q Basically, a dirt or a hard-compacted dirt road?

A Yes.

Q And what type of utilities do you require before you extend a mortgage? Any specific type of utilities?

A We require electricity, we require an approved sanitation system. If it's a septic tank, then it has to be approved by the state.

Rio Rancho has their own sanitation system.

Q Do you require --

A And water.

Q Do you require paved streets with curbs and gutters?

A No.

Q Have you ever required that?

A Have we ever required that for Rio Rancho?

Q For Rio Rancho.

A Well, there are two areas.

One area is in a high density area. We require paving.

But if you are talking about the ranchette type of thing with five acres, no, we don't require paving.

Remember, Rio Rancho is overlooking Corrales Heights. Corrales Heights is a farming community in Albuquerque and there are very few paved roads there because they want to maintain their rural atmosphere.

Q When you talk about the high density area where you do require paving, are you referring to the Corrales Heights section of Rio Rancho?

A Yes.

Q That is the high density area?

A Well, I think Panorama.

Q Panorama Heights as well?

A Panorama Heights, around the golf course.

Q And then you said with respect to the ranchette areas, the five acre areas, you would not make such requirements?

A No. That is a rural area.

Q Have you extended mortgage loans to people who have built on ranchettes at Rio Rancho?

A I'm not sure of that.

Q Then how do you know what you require if you are not sure whether or not you have extended mortgage loans?

A Because I set the requirement.

Q To your knowledge, has any building gone up on a five acre ranchette in Rio Rancho?

A I have not seen any.

Q To your knowledge, there are none, is that right?

A No. I have heard there are some.

Q Do you know where?

A No.

Q You talked about appraising or making appraisals of Rio Rancho Estates and the fact that your appraisals take into account the land and the house that the land is built upon, is that right?

A Yes, sir.

Q Has your institution, to your knowledge, made appraisals of any raw undeveloped land at Rio Rancho Estates?

A To my knowledge, no.

THE COURT: We will have a short recess.

(Recess)

end t

Q Mr. Graham, I believe you testified that the rate of Rio Rancho's growth was approximately double that of Albuquerque, I think you said 16 percent versus 8 percent.

Do you recall that?

A Yes. I think that was in 1974. I think that's right.

Q It's true in terms of absolute growth Albuquerque is growing a lot more than Rio Rancho Estates, is that right?

A Absolute defined as the number of people?

Q Number of people.

A Sure. It's a bigger town.

Q About how big is Rio Rancho Estates now in terms of people?

A Five to 7,000.

Q Do you know?

A No. We have a census once in 1970 and that's the last official census we have had in Sandoval County which did not break out Rio Rancho.

Q You testified about this wholly-owned subsidiary Amdec.

A Yes, sir.

Q That's involved with the Bellamah Corporation in developing Taylor Ranch on the west side?

A Yes, sir.

Q How big is the Taylor Ranch?

A . It started out about 1200 acres and we have since been able to put together another 300, 250 acres. About 1500 acres all together.

Q How long did the master plan envision it would take for Taylor Ranch to be fully developed?

A Eight to ten years.

Q And how many homes were projected to be on Taylor Ranch?

A Approximately 6,000.

Q I am correct, am I not, that Taylor Ranch is closer to Albuquerque than Rio Rancho? Is that correct?

A Yes, sir. It is part of the city limits of Albuquerque.

Q Is it fair to say Dale Bellamah is the biggest builder and developer in Albuquerque?

A Building permit-wise he is either No. 1 or 2.

Q Does Bellamah have any projects on the west side of Albuquerque other than Taylor Ranch?

A Not to my knowledge.

Graham - cross

Q It is true, is it not, that Bellamah's projects are in the northeast and east?

A We have one joint venture with him in the northeast, and the majority of his projects are in the northeast, yes.

Q What's the name of your project that you are joint venturing with Bellamah?

A We have one called Glenwood Hills South, which is just below Glenwood Hills.

Q Glenwood Hills was the development that you said --

A That wasthe old development that would have run above the 6200 line, and then developed in the process of finishing Glenwood Hills South, which is below the 6200 line.

Q How big is that development?

A About 250 lots.

Q You were reviewing the land in the south? You talked about land that was owned by the state.

A Yes.

Q Do you recall that?

A Yes.

Q Is that land held in trust for the University, to your knowledge?

mdjw 4

A To my knowledge, I think it is part of the land granted by the College Act.

Q That is the land you excluded in arriving at your own personal opinion about how much land was available for development, is that right?

A That's right.

Q Are you aware two years ago there was a proposal that Bellamah develop 11,000 acres of that land?

A I am aware that he had a master plan, right.

Q And that 11,000 acres was proposed for development, is that correct?

A My understanding is that there was -- I don't know how many acres, 11,000 acres down there.

Q My question is, are you aware 11,000 acres was proposed for development by Bellamah?

A I am not aware the figure was 11,000, no. I am aware there was a master plan. I have not seen it.

Q Are you aware there was a proposal to put 25,000 houses on that land?

A As far as the figure specifically, I am not aware of the figure.

(Government Exhibit 2005 marked for identification)

xxx

Q I ask you to read the first two paragraphs o yourself of 2005, and ask you if it refreshes your recollection.

(Handing to the witness)

A I don't read this newspaper.

Q How many newspapers --

A It's not an Albuquerque newspaper.

Q The Albuquerque Tribune is an Albuquerque newspaper, is that right?

A Yes.

MR. KAUFMAN: Will you mark this as Government Exhibit 2006.

(Government Exhibit 2006 marked for identification)

xx

Q Let me show you what has been marked 2006 for identification, and ask you to refer to the underlinings there and ask if that refreshes your recollection about the Bellamah project.

A Yes.

Q So there was a proposal then to develop over 11,000 acres of land in the southern portion of Albuquerque which would accommodate 25,000 housing units?

MR. ARKIN: May we have a date of the proposal?

MR. KAUFMAN: If you want the date of the article, sure.

December 21, 1973.

Q Is that correct?

A According to that article.

Q But you did not consider any of that land in arriving at your opinion of the 2500 acres being the only land available?

A No. I said at the time --

Q That's the answer.

A Okay.

MR. ARKIN: Let him finish his answer.

THE COURT: No. You can do it on redirect.

Q In your testimony you also mentioned the Atrisco land grand property, do you recall that?

A Yes.

Q You said that land is unavailable for development?

A No, I didn't say that.

Q You did not say that?

A I said that's -- that they have taken the heirs and set up a corporation called Westland Development Corporation, and a lot of that land is notready to be developed because of the fee title problem.

Q But it can be developed, is that right?

THE COURT: Do you mean now?

MR. KAUFMAN: Yes, sir.

THE COURT: Can it be developed now?

THE WITNESS: To my recollection, the majority of the land cannot be developed now.

Q Why is that?

A Because of the title problems.

Q With respect to the part of the land that can be developed now, have you taken that into account in ariving at your 2500 acres?

A It's not in the Northeast Heights.

Q What you are saying is just in the Northeast Heights was it 2500 acres?

A That's all I said.

THE COURT: That is all he was asked.

Q I gather then what you are saying is that it is not true that Albuquerque must only grow to the northwest three to five years from now because Albuquerque could grow to the west where the Atrisco grant is and it could grow to the south where that Bellamah project was prepared on the 11,000 -odd acres, isn't that correct?

A No, because the northwest, by definition, is west of the river and north of central just as your northeast is east of the river and north of central.

The criteria for what you are calling Northeast is the same criteria that I am using Northwest.

Q When you say Albuquerque --

A South I don't know about.

Q When you say Albuquerque has to grow to the northwest five years from now, your definition of the northwest is everything north of Central Avenue, right?

A Right.

Q Including this whole land spand right here?

A You mean inside the green area?

Q Yes.

A Yes. That's where we are.

Q Given your definition of the Northwest let me read this to you and ask if it was an accurate statement to have made in 1966.

"The city," referring to Albuquerque "can only expand in one direction, and that direction is squarely through Rio Rancho Estates."

Is that an accurate statement to have made in 1966?

A If they are talking Northwest, yes.

Q It was an accurate statement?

A When they say expanding through what do they mean?

Q Let me read the statement to you again.

MR. KAUFMAN: By the way, your Honor, I am reading from 316.

Q "The city can only expand in one direction, and that direction is squarely through Rio Rancho Estates."

Now, you have defined the northwest as everything down to Central Avenue, is that correct?

A Yes.

Q Is that an accurate statement to have made in 1966, that Albuquerque could expand in one direction and that direction is squarely through Rio Rancho Estates?

A Well, my opinion is it is not a completely accurate statement.

Rio Rancho is in the northwest.

Q But the northwest includes a lot of other land other than Rio Rancho?

A Sure.

Q Let me read to you from 314. This is in 1972.

"Today it is physically and geographically impossible for the growth of this city" referring to Albuquerque, "not to first come through Rio Rancho Estates."

Is that an accurate statement?

A No, I wouldn't say that's an accurate

statement if it says "first".

Q Mr. Graham, how long has your business relationship or your bank's business relationship been going on with AMREP or Rio Rancho Estates?

A The corporation itself making mortgages to the people?

Q Yes.

A On the homes, probably --

THE COURT: No, wait, wait.

THE WITNESS: You see, I don't understand.

THE COURT: If he lends money to a homeowner he is not dealing with AMREP or Rio Rancho, he is dealing with the homeowner.

Q Do you have any business relationship with AMREP or Rio Rancho Estates?

A No.

Q Have you extended any loans to the companies?

A I think we set up a commitment on a business building out there that Lovelace Clinic was occupying.

Q Was that a business transaction entered into with AMREP or Rio Rancho Estates?

A It would be with AMREP. We wrote a letter of commitment. I am not sure whether they took the loan out or not.

Q Do you know any of the individual defendants on trial here?

A Say it again.

Q Do you know any of the individual defendants on trial here?

A Yes. Sure.

Q Which ones do you know?

A I know Howard Friedman.

Q Which other ones?

A I know the lawyers, some of the lawyers, but they are not on trial.

THE COURT: They are not on trial.

THE WITNESS: Excuse me, your Honor.

A And the gentleman next to Howard. I'm sorry, I don't know his name. Howard Friedman is the one I recognize.

Q How long have you known Howard Friedman?

A From about '72. Four years.

Q Is he a friend of yours?

A Yes.

Q Do you own any land in Rio Rancho Estates?

A No.

Q Do you own any land in the Albuquerque area personally?

A No. Outside of my house, my lots on. Oh, no, I don't. I own some industrial property up by the airport in a joint venture.

Q Which airport are you referring to?

A The main airport, Albuquerquer International.

Q You are referring to the southern portion of Albuquerque?

A Yes.

Q This opinion that you have expressed about 2500 acres being all that is available in the northeast, is this a study that you personally undertook?

A Yes.

Q Did you write a report as a result of your findings?

A I don't need to.

Q Any document that exists that memorialized your study?

A No.

Q Any documents that exist that show what work you did in order to reach your opinion?

A No. Except as I told you we --

THE COURT: The answer is "No".

Q I gather what you did in order to arrive at this opinion was to talk to your bank's customers or clients in the northeast section, is that right?

A The builders that own land. The Academy. Bellamah.

Q You did not check with the Albuquerque Planning Department, is that right?

A No, they are not out there buying land.

Q But they are the people in Albuquerque who know about the growth of Albuquerque, aren't they?

A If you are asking me my opinion of what they said about the Northeast Heights they are mistaken.

Q No, you said the Albuquerque Planning Department's functions and responsibilities are to plan for the growth of Albuquerque, is that right?

A Yes, and they present a plan about every two or three years.

Q If I tell you they presented a plan in 1962, and a plan in 1964, and a plan in 1975, would that be every two or three years?

A No. How did the plan in '62 compare with '75?

Q I will be glad to tell you.

THE COURT: That is an interesting question, but you can take that up with counsel after the recess. I want testimony here, not colloquy between the witness and counsel.

Q By the way, when was it that you did this personal survey of the northeast?

A We keep a land inventory in Northeast Heights since we develop in the Northeast Heights on a running inventory basis.

Q I don't know if that answers my question.

The work that you did to arrive at your opinion about the 2500 acres, when did you do that work?

A It's a constant on-going type of work. As I said, we just bought 200 acres two weeks ago that was freed up because the intercept sewer is going to be a reality. We joint ventured.

Q Did you ever hear of the mid-Rio Grande Council of Governments?

A Yes.

Q You are aware that their function has to do with planning as well, you know, larger geographical area than just the city of Albuquerque?

A Yes.

Q Did you consult any of their reports or studies in arriving at your personal opinion about the 2500 acres?

A No.

Q Did you consult with any of the forecasting officials in the Mountain Bell Telephone Company in arriving at your conclusion?

A No. As I said, we have an inventory --

Q No, I think you have answered the question, Mr. Graham.

A Okay.

Q With respect to land that is on the west mesa which you have been describing as the Northwest section of Albuquerque, are you familiar with the development called Volcano Cliffs?

A Yes. It is above our subdivision. In fact we bought some of the land from Volcano Cliffs.

Q Do you know whether it was incorporated into Taylor Ranch?

A Yes.

Q Do you know approximately how big Volcano Cliffs is?

A No.

Q Percentage-wise, approximately, do you know how developed it is in terms of its overall size?

A Give me the overall size and I'll tell you the percentage, because up until the time Taylor Ranch went in with development, Volcano Cliffs was not developing very well.

end t

Q Are you familiar with a development called Paradise Hills?

A Yes.

Q Do you know how large Paradise Hills is?

A No.

Q Is Paradies Hills in a stage of development -- let me withdraw that question.

Is Paradise Hills fully developed?

A No.

Q Are you familiar with a development called College Heights?

A Yes, right next to Taylor Ranch.

Q Is College Heights fully developed?

A Probably 15 to 20 lots left. We are surrounded with that.

Q Have you heard of a development called West Gate Heights?

A Yes.

Q Is West Gate Heights fully developed?

A I wouldn't say West Gate Heights is northwest Albuquerque.

Q Where is it?

A It's right here. Near the letter P.

Q Are you aware West Gate Heights is located on

Atrisco land grant property?

A You mean they bought it from Atrisco heirs?

Q Yes.

A No.

Q You are not aware that it's located on the Atrisco land grant?

A I know one of the problems of Atrisco is they can't clear enough title to have continuity of development.

Q The question is, are you aware that West Gate Heights is situated on Atrisco land grant property?

A No.

Q Are you aware that there is an industrial park that currently exists that is situated on Atrisco land grant property?

A Yes.

MR. KAUFMAN: I have no further questions, your Honor.

THE COURT: Mr. Arkin.

MR. ARKIN: Your Honor, may I have, in accordance with the custom of this trial, a couple of minutes with my witness in back?

THE COURT: Yes.

I have another matter. Why doesn't the jury retire for a few minutes, and in their absence I can take care of the other matter.

(Recess.)

(In open court; jury present.)

XXX REDIRECT EXAMINATION

BY MR. ARKIN:

Q Mr. Graham, you were asked a few minutes earlier about an Albuquerque city planning department opinion or projection that there was enough land in Albuquerque to accommodate one million persons. Do you recall that?

A I recall he asked me that question.

Q Yes. I can't ask you that, he asked you.

A Yes.

Q Did you say you didn't agree with that?

A No.

Q You don't agree with that?

A No.

Q What are your reasons for not agreeing with that?

A It has to do with the density --

MR. KAUFMAN: Your Honor, I believe the witness' testimony was that he didn't see those reports.

MR. ARKIN: He didn't agree with it, too, was his testimony.

MR. KAUFMAN: I don't know what he could agree with if it's something he hasn't seen.

MR. ARKIN: He didn't agree with the conculsion, MA. Kaufman.

THE COURT: I gather he didn't see the report itself. Did you?

THE WITNESS: That's right.

THE COURT: He didn't see the report itself. Now he is being asked would he agree with that report.

MR. KAUFMAN: Without knowing what the report says or its assumption.

THE COURT: He is being given the ultimate which you read to him. That's what you put in the record. He is being redirected on that. You put the figure in the record, he didn't.

Q Please answer, Mr. Graham.

A It has to do with the density of land use in Albuquerque. I don't know where you are going to find enough land to put a million people. We are 350,000 people now. The majority of the land in the Northeast Heights is used. We are going towards the northwest. And the city itself in our dealings with the city, for instance, in Taylor Rancho are restricting us to a three to one density. That would be three lots to an acre for residence, and an overall five to one or five lots to an acre total density.

So our thousand acres in the beginning was the most structures that we could put up were 5,000 structures. I don't see how possibly they can get a million people into the land that we are talking about at the present time. I don't know what the density of that report was.

In Albuquerque, which is a southwestern city, everything east of Tramway, for instance, they have cut the density to three to one.

Q Three to one what?

A Three houses to one acre.

Q That's one gross acre or one net acre?

A Gross.

Q You also testified that with respect to the North Albuquerque Acres that it was difficult to develop that because it was sold to a large number of absentee, out-of-state owners. Is that correct?

A Yes.

Q In your view, does the same thing in terms of the difficulty of development hold true for Rio Rancho?

A No.

MR. KAUFMAN: Objection, your Honor. Beyond the scope.

THE COURT: Why did you ask him the question?

You knew this had to come back on redirect.

Q The answer is "no"?

A No.

Q How do you --

THE COURT: Tell us why not.

Q Yes, right. Thank you, Judge.

A Rio Rancho, New Mexico, is the fastest growing town in New Mexico, because of the fact that when Albuquerque Federal went in there AMREP was developing a city with golf course, with shopping centers, with population centers --

MR. KAUFMAN: I don't believe this is responsive at all to the question.

THE COURT: He is giving his reason as to why the reasons for the inability to develop North Albuquerque Acres doesn't apply to Rio Rancho.

MR. KAUFMAN: The reason he gave was scattered, out-of-state ownership.

THE COURT: This is reason.

A As long as you have development of contiguous land, and you are not cut off, then you are going to be able to develop that land contiguously from the river outward.

We did it in the Northeast Heights of Albuquerque because we had employment. At that time, as you said, I guess, 50 years ago, I wasn't born then, but North Albuquerque Acres was sold as apparently a land development or a land scheme and the people left, and left us with a mesa and I used to go horseback riding out on that mesa.

I cannot see the comparability between your question and North Albuquerque Acres.

Q Does your answer also have to do with the continued presence for the past 15 years of AMREP at the site?

MR. KAUFMAN: Objection to the leading, your Honor.

THE COURT: Sustained.

Q Are there any other factors which go into your opinion that there is no compact between Rio Rancho and North Albuquerque Acres?

A Well, it's difficult for me not to assume that --

THE COURT: Wait a minute. You weren't here when it started, were you, not Albuquerque Acres?

THE WITNESS: No. If we are talking about Rio Rancho, the reason that we went into Rio Rancho is because we had a commitment from AMREP that they were going to build and maintain a city. And that's the reason we went in. That's why I said it's got comparable to North Albuquerque Acres, where they left.

Q You were also asked about a program for some 11,000 acre development on south mesa. Do you recall being asked that by Mr. Kaufman?

A Yes.

Q Has that program ever come to fruition?

A Not to my knowledge. The University of New Mexico still owns the land.

Q You mean the State of New Mexico owns the land in trust for the University of New Mexico?

A Yes. If you read the article he gave me it will state all the objections why possibly it will never happen.

Q After this program did Mr. Bellemah go to the northwest with his next development?

A I am not sure of the time frame, but we are joint ventures in 1500 acres now and that's the only one he has on the northwest side of Albuquerque.

Q Just a few more questions.

With respect to the remaining 2500 acres you testified to which remain in the northeast, would you explain to his Honor and the jury why you didn't see fit to consult the city planning department of Albuquerque before making your estimate?

A I tried to bring that out before, but the city of -- the planning department of Albuquerque doesn't buy the land, they only set the density, and they don't know what is out there, so my opinion of a lot of planners may not be the best.

Q You mean the highest?

A The highest, yes.

Q Did you obtain your information from other people in the land business in Albuquerque?

A Yes. We keep a continuing inventory of all land in Albuquerque so that we can constantly look for land to buy. The way Albuquerque is set up now with the planning commission, with the requirements for planning, it takes a very large block of acreage to set up a subdivision, and it takes a lot of money to develop that subdivision.

Consequently, we know where all the large blocks of acreage are.

Q Now, Mr. Graham, I am going to ask you to step off the stand for a moment and take the pointer. Would you, sir, on that mosaic, or map , trace a line illustrating your view as to the direction or trend of growth of Albuquerque in the future?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A I am going to put it right through Taylor Ranch, your Honor (indicating).

Q May I ask you if the end of your line, or if your line traverses Rio Rancho?

A Yes.

Q It goes through Rio Rancho?

A Yes.

Q Just a few more questions.

Did you say you knew Howard Friedman?

A Yes.

Q Have you an opinion as to his character?

A He is a friend of mine.

MR. KAUFMAN: I object, your Honor. This can be done on direct.

THE COURT: He wasn't put on as a character witness. Do you want him to take him off and put him back on again?

MR.KAUFMAN: We were held to a strict standard of what could be done on direct.

THE COURT: Get off the stand.

(Witness left the stand.)

THE COURT: Stop. Come back on again.

(Witness resumed the stand.)

THE COURT: This is now direct examination of the witness as a character witness.

XXX DIRECT EXAMINATION

BY MR. ARKIN:

Q I will rephrase my questions.

Have you an opinion as to the character of Howard Friedman?

A Yes.

Q What's that opinion, sir?

A He is a friend of mine. He is an honest person, he has contributed very much to the city of Albuquerque in his leadership. He is a member of the board of directors --

THE COURT: That's outside the scope of the question.

Q My question was your opinion as to his reputation for honesty, integrity, decency and so forth, sir. And what is that opinion?

A He is a friend of mine and to me that means that he's an honest person of high integrity, with the exception of his golf.

Q And you don't care to comment as to his golf, do you?

A No.

THE COURT: Maybe in keeping score.

(Pause.)

THE COURT: (To Mr. Devorkin) Next time you do that you go out of this courtroom. You have done it constantly for two months, and I won't stand for it. I am addressing you, Mr. Devorkin.

MR. ARKIN: I have no further questions, your honor.

THE COURT: You may cross examine on character.

XXX CROSS EXAMINATION

BY MR. KAUFMAN:

Q You said in your opinion Mr. Friedman's reputation for honesty and truthfulness is good, is that right?

A Yes, sir.

Q Do you remember the scripts that I read to you just a little while ago that you said were inaccurate and untrue in terms of its depiction of Albuquerque's growth?

A I don't think I used those words. You will have to refer -- tell me.

Q Do you recall I read to you the following, "Today it's physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates."?

A And I said that was an inaccurate statement.

Q That's right. And I also read to you from 316, which basically said language substantially the same, and you said that was inaccurate as well. Do you recall that?

A There were two parts of that statement. One of them I agreed to, and the other I didn't.

Q The other was the city can only expand in one direction and that direction is squarely through Rio Rancho Estates. I believe you said that was inaccurate as well given the overall context of the northwest.

A Yes.

Q If you knew Howard Friedman was involved in making those statements to the public in connection with selling 86,000 lots of land in New Mexico, would your opinion about his honesty and truthfulness be the same?

A In my associations with him, that's where my opinion is derived from.

Q If you knew that he was involved in making that representation to thousands of people who were prospective customers for Rio Rancho land around the country, would your opinion of his reputation for honesty and truthfulness be the same?

A Did he write that?

Q If I tell you that he was involved in producing that --

THE COURT: Oh, no.

Q -- in either writing --

THE COURT: Wait. I don't think the government wants to be in a position to make that representation, does it?

MR. KAUFMAN: Writing, no, your Honor. In being responsible for it, yes.

THE COURT: You don't tell him what you think. That's for the jury to determine. That's the ultimate question for the jury. You can frame a hypothetical, but you don't tell him what you think.

Q Hypothetically, Mr. Graham, if you knew that Howard Friedman was responsible for the production of that representation to thousands of people around the country who were at Rio Rancho sales dinners, would your opinion about his reputation for truthfulness and honesty be the same?

A I don't believe so.

MR. KAUFMAN: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. FLEMING: We have no further witnesses for this afternoon, your Honor.

THE COURT: You are excused until tomorrow morning at 10:00.

(Jury excused.)

THE COURT: What happened to Exhibit 179 and 179-A?

MS. HYNES: Ms. Thompson is not back in court, your Honor, and we were waiting for her.

(Adjourned to January 5, 1977, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
John B. Kearney (Resumed)		6245	6262	
Raymond Frappier	6267	6282	6303	
Hugh J. Graham	6314	6346	6392	

EXHIBIT INDEX

Defendants	Identification	In Evidence
IF,IJ,HW,HR,HS,IG,IL		6227
ID,II,IM,HU,HW		6227
HG,HL		6227
HP		6228
HF,HM,HX,HZ,IA,IX,IW		6230
JC		6233
JT	6272	

Government	Identification	In Evidence
2001	6283	6284
2002	6297	
2003	6298	
2004	6352	
2005	6376	
2006	6377	

tla.am

gtjb

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 5, 1977
10:00 a.m.

(In open court in the absence of the jury.)

THE COURT: Is there an application from Mr. Fleming?

MR. FLEMING: Yes, your Honor.

May I hand to the court Exhibit 314 in evidence, which has written on it, "Steve Bondy's presentation August, 1972," and specifically page 9, if your Honor please.

Your Honor, at page 6381 of the record --

THE COURT: Was that yesterday?

MR. FLEMING: Yes, sir.

On cross examination, at line 20, Mr. Kaufman asked of Mr. Graham, "Let me read to you from 314. This is in 1972."

And a quotation follows:

Now, that quotation, your Honor, comes from the third to the last sentence of the top half paragraph of Exhibit 314.

THE COURT: Yes?

MR. FLEMING: The sentence, as a whole, reads:

"As a matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us."

THE COURT: Yes?

MR. FLEMING: Mr. Kaufman read to Mr. Graham: "Today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates," period.

On the cross examination, Mr. Graham, as a character witness, Mr. Kaufman, at page 6401, repeated at line 19, "Do you recall I read to you the following:

'Today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates.'"

I believe it is fair to say the word "first" was emphasized.

The words "before it gets beyond us," changes the whole meaning of that sentence.

If I can read the entire paragraph, if your Honor please:

"So as a result of this straddling of the city on these three sides, the growth can go in just one direction -- one direction only, and that happens to be to the westerly and northwesterly side from the city of Albuquerque in the very path where Rio Rancho Estates is located."

I get to the sentence in question:

"As a matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us. Because this entire growth area is straddled by Rio Rancho Estates."

Now, if your Honor please, I believe that is such a misleading question as asked of this witness, used twice, used again on an attack on Mr. Friedman's character, that I ask for a mistrial.

THE COURT: Your application is denied.

You should have made this objection yesterday, when Mr. Kaufman was reading from the document.

It is normal for counsel to have indicated on the record the page of the exhibit from which he is reading so you can follow what he is reading and determine whether he is reading it correctly.

That occurred yesterday afternoon, I would say after the recess, which would have been after 4:00. You are now bringing it to the attention of the court at ten minutes after ten the following day.

I will not grant a mistrial, but I will allow you to put the witness back on the stand.

MR. FLEMING: He is not here, if your Honor please.

THE COURT: Well, get him.

MR. FLEMING: He is in Albuquerque, I believe.

MR. ARKIN: He is on the way.

Wait a minute.

Perhaps, if your Honor please, what bothered Mr. Fleming and I very much last night when we did read the script was that the word "first" which on cross examination Mr. Graham said that that was the inaccurate portion of that word, that word was modified by the first portion of that sentence and that if the entire sentence was read he would have said accurate.

We don't have the witness. At the very least, it should be explained to the jury or we should have a curative instruction or we should have the full sentence read, because now the prejudice from yesterday, while certainly we can argue on summation in two weeks or three weeks or two and a half weeks hence I don't think it ought to be allowed to fester in the jury's mind.

That was a misleading and inaccurate quote.

THE COURT: Yes. But I cannot change the witness' answer on the record.

MR. ARKIN: But at the very least we can explain to the jury or tell the jury that the question phrased or made to the witness was made upon an incomplete, if you will misleading, portion of the script.

The point is, the whole purport of the question, your Honor, was --

THE COURT: I know the whole purport of the question and agree with you the reading was merely part of a sentence and the portion that was read distorted the meaning of the entire sentence.

MR. ARKIN: Yes, sir.

THE COURT: I agree with you.

MR. ARKIN: Yes, sir.

THE COURT: But on the other hand, I have to point out, this is an obligation of counsel at the time it happens, not the following day, when the witness has gone back to Albuquerque.

Now, I will not change the witness' answer.

MR. ARKIN: No.

MR. FLEMING: Nor would I ask --

MR. ARKIN: You can strike the question.

THE COURT: I won't strike it, not at this late date, because I am preventing the government from asking another question of the witness.

MR. FLEMING: I would ask the opportunity, your Honor, to read to the jury beginning on one side down to the bottom of the paragraph as against the question as was asked --

THE COURT: I will let you read the sentence completely, but that's all.

MR. ARKIN: Can he read the sentence and compare it at that moment to the question asked by Mr. Kaufman so that the jury --

THE COURT: Mr. Kaufman, you are involved in this.

MR. KAUFMAN: Your Honor, number one, I don't believe an entire context makes the question asked misleading, because it talks about Rio Rancho Estates straddling this entire area, and as Mr. Graham --

THE COURT: Mr. Kaufman, now, wait a second.

That sentence as it appears here, which I see for the first time, is a truism. You can't get on the other side of Rio Rancho without going through Rio Rancho.

MR. KAUFMAN: Sure. But it creates the impression --

THE COURT: But that isn't what you read.

MR. KAUFMAN: It creates the impression since Albuquerque can only grow in that direction it has to go through Rio Rancho --

THE COURT: But that isn't what the sentence says, does it? That isn't what the sentence says.

You can't change the sentence to pick out words to suit your convenience.

If you want to ask the witness whether if something is true or not, you have to read the whole sentence to him. You didn't do it. And you left out the words, which are very important to the meaning of the sentence, "before it gets beyond us."

MR. KAUFMAN: But it also includes the language about Rio Rancho straddling this entire western and northwest area, which I do not believe it does --

THE COURT: You only read one sentence, Mr. Kaufman.

MR. KAUFMAN: Your Honor, I think your answer is the correct answer, if there is anything here that tends to mislead the jury, the witness should be called back and corrected.

THE COURT: Not if it was your fault in doing it, Mr. Kaufman.

I think you are equally culpable with the defendant.

I don't release them from their obligations to have conducted them as trial lawyers and followed what was being read and corrected at the time. They failed in that.

But I think that your leaving out part of a sentence is a little unfair, too.

How are we going to correct it?

I am perfectly willing to read to the jury that sentence read by Mr. Kaufman to the witness yesterday read as follows.

And then I will read the quotation of your question on page 6381 and then on the cross examination --

MR. KAUFMAN: I think it is 6401.

THE COURT: And then 6401 and say that the sentence should have read, the complete sentence reads, and read it to them and leave it at that.

MR. KAUFMAN: Your Honor, if we are talking about what --

THE COURT: We are talking about what you read to the jury on page 6381.

MR. KAUFMAN: Your Honor, okay.

If we are saying that I should have read a complete sentence or a complete thought to make the whole representation complete, then the government submits that if we are going to read an expanded portion of this script, that what should be read to the jury should be what starts with the word "so."

THE COURT: I disagree with you.

You took a sentence and took a couple of words out of a sentence. Your obligation was to read the entire sentence.

MR. KAUFMAN: Your Honor, if I would have read --

(Continued on next page.)

1B am

GTjw 1

THE COURT: If you wanted to read the sentence before, you would have read it to him, but you didn't.

MR. KAUFMAN: Your Honor, if I had felt that what I was doing was misleading, I obviously wouldn't have done it.

If somebody had pointed it out to me and said, "What you are doing would tend to mislead," then what I would have done to read the whole thought would have been to have started with the word "So as a result of the straddling of the city."

If that is what we are trying to correct, any possible misrepresentation, I think what ought to be read to the jury is what would have been read to the jury in its entirety.

THE COURT: It is perfectly obvious the words you omitted "before it gets beyond us," changes the whole meaning of the sentence.

MR. KAUFMAN: Yes. But then if you take that sentence in isolation, I think it is --

THE COURT: You did. You not only took it in isolation, you took a portion of it in isolation.

MR. KAUFMAN: And I am saying --

THE COURT: And from the witness' testimony,

gtjw 2

I think his answer would have been entirely different even if you read the sentence before.

I have not read the transcript yet, but he kept saying westerly and northwesterly, and his answer would have been yes, even the sentence you want to read would have been a true sentence.

He would have agreed with that statement that you now want to add.

MR. KAUFMAN: Your Honor, then I think the only way to clear it up without surmising what the witness could testify to is what your Honor originally stated, to call him back, and then if that is what the defense thinks and the Court thinks his answer could be he could be put back and it will be cleared up.

THE COURT: Mr. Fleming, do you want to call him back?

MR. FLEMING: I have no objection to calling him back, but I don't want this to sit here festering, Judge.

THE COURT: I will say this to the jury, on condition that you agree to call him back.

Festering for how long? Twenty-four hours? Where is he?

MR. ARKIN: He is on route right now back to Albuquerque. He left on a 7:30 flight, as I understand it.

I can check at the hotel to make sure that he has left, your Honor, but as I understand he left on a 7:30 flight this morning, which means he will be back in Albuquerque something like, oh, 2:00 o'clock or 3:00 o'clock New York time.

Obviously, his own personal convenience does not loom extraordinarly large in the context of a case like this, but having him come back from Albuquerque, say, overnight or tomorrow is something which I think your Honor would agree is a mighty large inconvenience.

THE COURT: I agree it is a might large inconvenience, but I also agree that this is a mighty large problem we are dealing with.

MR. ARKIN: Absolutely. I mean, that's why we brought it to your Honor's attention.

THE COURT: I would rather have him back here than merely reading an entire sentence and then have quibbling,"Well, I want the sentence before it read," and then, if you read the sentence before then you want to argue, "Well, his answer would have been different even to the sentence before."

I think it would be, but I can't use my

gtjw 4

imagination. There is testimony here.

MR. FLEMING: I have no objection to that. I would just like the sentence corrected. I have no objection to reading what Mr. Kaufman wants to read today and we will bring the witness back to see what his answer is. But I would just like that cleaned up.

THE COURT: All right. I will read both sentences.

MR. ARKIN: With Mr. Kaufman's quote and what the quote in the script is.

THE COURT: I will say, yesterday Mr. Kaufman read a quotation from Exhibit 314 as follows: "Today it is physically and geographically impossible for the growth of this city," referring to Albuquerque, "not to first come through Rio Rancho Estates," the full quotation should read as follows, and I will start with "So" as Mr. Kaufman wants to put in and the next sentence and I will leave it at that. Do you want me to tell the jury this witness is coming back or do you want to leave it open?

MR. ARKIN: I think we will have to leave it open, your Honor, because I couldn't agree more with you, and obviously we brought it to your Honor's attention because we think it is an enormously serious problem.

And I will also say to your Honor that I should have been reading the script yesterday at that time. I just felt that Mr. Kaufman would have read the entire quote and I didn't doubt that he would, and only when I got back did my doubts and uncertainties arise.

I will call him or have him called and see if we can get him back. He is obviously a very busy businessman and going to and from Albuquerque is not the most -- it is five hours, five and a half hours, and I'm sure he wouldn't be happy --

THE COURT: Why did he leave our fair city so quickly?

MR. ARKIN: He doesn't think it's very fair.

THE COURT: Fun city.

MR. ARKIN: Oh, fun city?

Your Honor, the condition of his coming was that somebody met him at the airport, took him to the hotel and took him back.

THE COURT: He does not trust us that much.

MR. ARKIN: Well, I don't want to put it quite that way.

THE COURT: Anyhow, I will read two sentences, the one that Mr. Kaufman wants me to read and the portion of which he read yesterday.

MR. KAUFMAN: Your Honor, number one, I should point out, if Mr. Arkin were aware of this problem last night and Mr. Graham didn't leave until this morning that he --

THE COURT: Come on, you are quibbling, Mr. Kaufman. I am sorry.

MR. KAUFMAN: My feeling is that this should not be read to the jury unless the witness is going to be called back to correct it.

THE COURT: I can't let this go, Mr. Kaufman, now that it has been brought to my attention. I am asking you the best way to do it without too much impact.

It is eminently unfair to read a sentence leaving out words which qualifies what you put to the jury and what you put to the witness, and those words qualify it.

All that sentence says is you can't get to the north side of Albuquerque without going through the south side, and that is a truism. That is all it says.

Are we agreed, then, the defense, I will read both sentences?

MR. FLEMING: Yes, your Honor.

MR. ARKIN: Yes, your Honor, that is fine.

MR. KAUFMAN: Your Honor, one other matter.

One of the names of a potential witness for today that was given to us was a John Rupley.

We have ascertained that Mr. Rupley is a reverend in Albuquerque, I gather, the Reverend of All Saints Lutheran Church, and Mr. Fleming has here a master plan for the All Saints Lutheran Church which I gather was prepared by a firm called Rupley & Associates, Mr. Rupley being the Reverend's son.

We have not been told what the purport of this testimony is going to be and I think possibly before we call the Reverend out on the stand there ought to be an offer of proof with respect to it.

THE COURT: Yes, Mr. Fleming.

MR. FLEMING: Your Honor, so far as this particular document is concerned, it is a master plan for an enlargement of the All Saints Lutheran Church located in Albuquerque, New Mexico. It is located on the west mesa just south of Rio Rancho.

It is based upon projections for church growth over the next five years, which in itself is based upon analysis of growth in that area, the west mesa, northwest mesa.

gtjw 8

It was verified, and my problem is I don't know the exact title, I will use Diocese just as a word, it was verified by the American Mission, whoever heads the Lutheran Church in America --

THE COURT: Is that the Missouri Synod, Mr. Fleming?

MR. FLEMING: Judge, ever since first confession, I haven't been able to go any further.

But in any event, it was reviewed and verified and funded by the people that run the Lutheran Church.

3 tlb

MR. KAUFMAN: Your Honor, I gather they are trying to put in a master plan which contains projections about Albuquerque's growth through a reverend who has no expertise in the field. They are not putting on the son.

I gather they are putting on the reverend and I don't think they can get in through the reverend what predictions were made about Albuquerque's growth through the son. They should put on the person who made the study and not the reverend who received it and presumably has no expertise in the field other than in his field or religion.

MR. FLEMING: The reverend has been there since 1968 and he knows how his own parish has grown. He has been president of the West Side Association for at least two years. The materials which are contained in this were verified by Milton E. Hallet of the Lutheran Church of America who came down to Albuquerque to verify the presentation in order to authorize the dispensation of funds.

THE COURT: I don't think that admits the document. I think the reverend can testify as to the information you have printed there and upon which he relied, but I don't think that document comes in.

MR. FLEMING: Official church document, Judge.

THE COURT: The person who is charged with building a church I think can testify as to the information he relied on. Of course I think you end up with the document getting involved anyhow, Mr. Kaufman.

MR. KAUFMAN: I think so and that is the reason for the objection, your Honor.

THE COURT: You cannot keep the witness off the stand who is in charge of building a church for his parishioners and say this is what has happened while I was there and, therefore, we built.

Isn't that a fair item to bring to the attention of the jury?

MR. KAUFMAN: We have to be very careful. If the reverend will testify that his parish was expanding and the physical plant couldn't accommodate those people, fine, that is one thing.

THE COURT: That is what he is going to say.

MR. KAUFMAN: If he is going to say that the Albuquerque growth was coming out to the west mesa, I don't think the reverend is qualified to testify that way and I think you need the son for that.

THE COURT: I think the man can testify to his experience as to what caused him to enlarge the church. My parish consisted, in other words, of 100 families. It grew 25 families a year and we envisioned that this would continue and therefore we expect this and stop.

Mr. Kaufman says he is going to lead right back to that plan.

MR. ARKIN: That plan comes in under the divine guidance exception.

THE COURT: They did not teach me that at Columbia Law School. I don't think Professor Henry Morgan believed in that theory.

All right, bring the jury in.

What was that second page?

MR. FLEMING: 6401, your Honor.

(In open court - jury present)

THE COURT: Ladies and gentlemen of the jury, you will recall yesterday afternoon when Mr. Kaufman was cross examining Mr. Graham he read a portion of Exhibit 314 to Mr. Graham and asked him whether the statement that he read to Mr. Graham was correct or not.

It appears that the statement that was read to Mr. Graham was not a complete statement and I would like to read the complete statement to you.

This is from page 9 of Exhibit 314, which reads as follows:

"So, as" let me read what Mr. Kaufman read to Mr. Graham.

"Q Let me read to you from 314. This is in 1972.

"Today it is physically and geographically impossible for the growth of this city" referring to Albuquerque "not to first come through Rio Rancho Estates."

The full text is as follows:

"So, as a result of the straddling of this city on three sides the growth can go in just one direction, one direction only, and that happens to be to the westerly and northwesterly side of the city of Albuquerque in the very path where Rio Rancho Estates is located. As a matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us."

That is the end of the full quotation.

Mr. Kaufman also asked Mr. Graham on cross examination as to Mr. Graham's testimony regarding Mr. Friedman's character.

The question Mr. Kaufman put to Mr. Graham was:

"Q Do you recall I read to you the following, Today it is physically and geographically impossible for the growth of the city not to first come through Rio Rancho Estates" that was on whether he knew -- his impression of Mr. Friedman would be the same if he knew Mr. Friedman was identified with such a question and substituted for that question is the full quotation which I have now read to you.

Do you want the other statement, Mr. Fleming, about the witness?

MR. FLEMING: We are going to make an attempt to get Mr. Graham back here to New York.

THE COURT: Mr. Fleming said they will make an attempt to get Mr. Graham back to New York so he could answer the question based on the full quotation which I have read to you.

You may proceed with your next witness.

MR. FLEMING: The Reverend John Rupley.

REVEREND JOHN B. RUPLEY,

called as a witness by the defense, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. FLEMING: Thank you, your Honor.

DIRECT EXAMINATION

XXX BY MR. FLEMING:

Q Reverend Rupley, you know my name is Peter Fleming, we have spoken before?

A Yes,sir.

Q What is your occupation, sir?

A I am pastor of All Saints Lutheran Church.

Q Where is that located?

A It is located on Coors Road about a quarter of a mile -- no, a block from Paradise Boulevard, just south of Paradise Boulevard.

Q Do you know Rio Rancho Estates?

A Yes, sir.

Q Can you place your church in relation to Rio Rancho Estates?

A Miles or time?

THE COURT: Both.

Q And direction.

A I would say it was about five miles if you went up Coors up to Rio Rancho Estates.

Q Is it north or south of Rio Rancho?

A It is south and a little east.

Q So it is between Albuquerque and Rio Rancho?

A Right.

Q About five miles south of Rio Rancho?

A Right.

Q Now, when did you enter the ministry?

A 1942.

Q Did you serve in various parishes before coming to Albuquerque?

A Yes, I did.

Q When did you come to Albuquerque?

A I went to Albuquerque to look over the situation at All Saints in the fall of '68 and then actually moved there January of '69.

Q Before moving to All Saints in January of 1969 did you conduct your own investigation with regard to the viability of a Lutheran parish at All Saints?

A There was already a parish established and our Board of American Missions, which is located at 231 Madison Avenue here in New York had regional secretaries in the various areas of the United States and Canada and the regional secretary came to me and said they were going to close the All Saints parish because of lack of membership. It had fallen below what was allotted as even a mission status.

Q Did you go to Albuquerque and conduct an investigation?

A Yes, sir.

Q Did you speak to various people about the northwest mesa?

A Yes, I did.

Q Did you reach a conclusion?

A I did.

Q Did you take --

A I told the regional secretary that they should not close the church.

Q How did you come to go to the church?

A The congregation issued me a call and I accepted.

Q This was in January of 1968?

A No, this was in the fall of '68 and then I actually moved there the first part of January of '69.

Q You have been there since?

A Yes, sir.

Q Now, where was the church located when you first took it over?

A It was a storefront in the shopping center in Paradise Hills behind a grocery store.

Q I use the word pastor, is that correct in the Lutheran Church?

A That's correct.

Q When you took over as pastor of All Saints it was in a storefront where?

A In Paradise Hills in a little shopping area that is at the top of the hill.

Q Do you recall how many parishioners you had at that time?

A All the names fit double spaced on an eight and a half by fourteen sheet and I think it totaled about thirty-one.

Q Now, between 1968 when you arrived and 1971 did you parish experience any growth?

A Yes, so much so we had to build and we moved into our new building March of 1971.

Q You say you had to build, what did you build and where did you build?

A We built a church with a multi-purpose room, 4900 square feet, on Coors near Paradise Boulevard.

Q On how many acres of land?

A At that time it was a little less than three. Now we have more than four.

Q Do you recall how much it cost to get the land and build the church in 1971?

A Well, the land was a swamp from an original piece of property that was south and then we exchanged it.

The land would cost 20,000. The building itself less contents and what have you about 95,000 so I imagine it would be a total of 115,000.

Q Have you had that church and property appraised or did you have it appraised in 1973 or 1974?

A It must have been about 1973 that we were told to have the land appraised in order to get an ongoing loan from the AID Association for Lutherans, which is an insurance group, and A.I. Rowlen did the appraising at that particular time and I think it was '73.

Q He appraised the church and the land together?

A He appraised the land and the church excluding contents.

Q What value did he give it?

A $346,000. No, I beg your pardon, I take that back. $246,000.

Q $246,000.

Now, when you built the new church did your parish continue to grow?

A Oh my, yes.

Q What is your present membership?

A Around 500.

Q From the 31 you mentioned?

A Yes.

endt

Q Have you submitted -- I am sorry, what is the name of your governing body?

A Lutheran Church in America.

Q Have you determined that it is necessary to enlarge your church?

A We are in that process now.

Q Again, now in 1977?

A Yes, originally we built 4900 square feet and now we are adding 5600 square feet.

Q In order to do that is it necessary for you to obtain the approval of the Lutheran Church of America?

A Our New York office has to approve it all.

Q In order to gain your approval, what must you do?

A Well, we had to start out by making a master plan of the congregation, community, all the various growth patterns, need patterns and this had to be subitted to the New York office.

The Division of Missions in North America, which formerly was called the board of North America Missions, is located here in New York now at the address I gave before.

They have to approve it and then they have regional men that also help us in ascertaining what we should look forward to in the future.

Q Does the parent orgzniation, the parent church, verify your representations before they will approve it?

A Oh my, yes.

Q Do they send a person or persons to Albuquerque to examine your representations?

A Yes, the man's name is Milton Hallet, I think that's H-a-l-l-e-t, and he is stationed at Denver for our particular southwest area.

Q Has he conducted that verification?

A Yes, sir.

Q Has your proposal been approved?

A Yes, sir.

Q I take it the expansion looks towards an increased parish, is that correct?

A Definitely.

Q What is your expectation of the number of parishioners by the year 1980?

A It should be in the neighborhood of 1100 according to the projected figures.

Q Now, you say that you have grown to approximately 500 parishioners, is that families or parishioners?

A We have three rolls in our church. One is the baptized roll which is infants all the way through, which is the 500-plus figure that I gave you.

Another is the communion roll, those who have received communion at least once during the year and the other is called the active confirmed roll, those who have either communioned or contributed during the past year.

Q The 500 would be individuals or families?

A The 500 would be individuals, 500-plus. 545 I believe is the exact figure.

Q Now, are you familiar with the -- withdraw that.

So that is then an increase from 31 to 545 since you took over in September 1968?

A Now we are getting two rolls mixed up.

Q All right.

A The 31 were active adults. Probably counting the children under first communion age or confirmation age it would have been close to probably 100.

Q Okay. So 100 to 545, would that be approximately correct?

A Right, now you are using the right relationship.

Q Reverend, are you familiar with Lutheran Churches in other parts of Albuquerque?

A Yes.

Q Are there any in the southwest section of Albuquerque?

A No.

Q Are there any in the southeast section of Albuquerque?

A Yes.

Q How many are there?

A Two.

Q During the period that you have been at All Saints on the west mesa, has there been any growth in the parishes in the southeast portion of Albuquerque?

A I would say nominal.

Q How many Lutheran parishes are there in the northeast quadrant of Albuquerque?

A Northeast. I would say about 7 or 8.

Q Do you have an idea --

A You are talking about all Lutheran?

Q Yes, that is right.

A Because there are three Lutheran groups in the country.

THE COURT: What are their names?

A The Lutheran Church in America, that is the one I belong to. The American Lutheran Church and the Lutheran Church Missouri Synod. I will take one more, there is a Wisconsin Synod in Northeast Heights.

Q Do you have an idea of the total number of parishioners in all of those churches in the Northeast Heights as of this date?

A Total number, I could only give you an estimate.

Q Would it be a fair statement?

A I think so.

Q All right.

A I would say in the neighborhood of 4,000.

Q Can you give a fair estimate, and only if you can, give a fair estimate of the percentage increase in all the parishes in the Northeast since 1968?

A Well, I am not really familiar with the growth of the Lutheran Church Missouri Synod or the growth of that one Wisconsin Synod Lutheran Church. I would say that they have all grown probably in the vicinity of about fifteen percent.

Q During the period you have been in Albuquerque?

A Yes.

Q Now, while you have been in Albuquerque have you also been -- do you know what the West Side Association is in Albuquerque?

A Certainly.

Q Have you been a member of the West Side Association?

A I have not only been a member, I have been on the board and been its president.

Q When were you its president?

A 1970 and thenfor two and a half years.

Q From 1970 forward?

A Can I give or take a year. I was president for two and a half years and it seems to me that, the West Side Association was originally organized I think back in the fifties and it was organized and the first president was Bob and Al Unzer's father, the race drivers.

Then it kind of fell into decay during the later part of the sixties and I am not sure whether it was in '69 that we started to revive it and then really got it going in 1970 or whether we really got it going in 1971, but at that time they elected me president and I was president for two and a half years from that particular point in time.

THE COURT: Would you mind having the witness tell us what the West Side Association is.

MR. FLEMING: I am sorry, your Honor, you are right.

A The West Side Association is, I guess the best comparison I could give your Honor would be to say that it was sort of a chamber of commerce for the northwest and southwest quadrants of Albuquerque.

The banks, the savings and loans, the various developers, no one could belong or join for more than $100 which entitled that particular firm three votes in the action of the west side.

Q Was Rio Rancho a member of the West Side Association?

A Yes, sir.

Q By the way, in Albuquerque, have you had an opportunity to visit Rio Rancho from time to time?

A I almost visit it every day.

Q Have you seen any development at Rio Rancho since you have been there?

A Oh my, yes.

Q Let me ask you something, Reverend:

Since 1968 when you came to the church until this very day on your visits to Rio Rancho and in the Albuquerque neighborhood, have you seen or heard anything inconsistent with an intention on the part of Rio Rancho to develop its property?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q As a member of the West Side Association and as a resident of Albuquerque, do you personally have an opinion as to the direction of growth of Albuquerque?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

Q Yes or no?

A I am sorry, I have to ask you to repeat the question.

Q My question was, I had a preface which I have forgotten --

THE COURT: As president or a member of the West Side Association.

A I thought he said I was a resident of Albuquerque. My mailing address is Albuquerque, but I live in Bernalillo County.

Q You are not within the city limits?

A I am not within the city limits.

Q As a former president and member of the West Side Association and as a resident in Bernalillo County since 1963, would you answer yes or no in the first instance, do you have an opinion as to the direction of growth of the city of Albuquerque?

A It can only go west and northwest.

Q Now, what is the basis for your saying that?

A Well, now this comes out of COG, which is the Council of Governments which is made up of the three counties that are around Albuquerque and Mr. Garvin I think you might refer to him as the executive secretary of that organization and I think he phrased it really well when he said "Albuquerque is framed."

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained. Just tell us what you relied on. Not how somebody else described it.

Q Your own personal reasons.

A Albuquerque is boxed in. You can't go any farther east because of the Sandia Mountains. You can't go south because of the Isleta Pueblo. You can't go north because of the Sandia Pueblo and the only way to go is west in growth.

Q Are you familiar with the Atrisco grant?

A Yes, that is controlled by the Westland Corporation and they aremembers of the West Side Association.

Q Are you familiar with any title problems in connection with the Atrisco grant which have not yet been settled?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A The difficulty there is I think there is about 700, in the neighborhood of 700 Spanish owners and for them to do anything they have got to get all the signatures and this is one of the reasons I think they formed that Westland Corporation.

Q Tell me, Reverend, since you have been in Albuquerque in the beginning of September of 1968, has there been residential, that is the building of residences in the northeast quadrant of Albuquerque?

A Northeast?

Q Yes.

A West Gate Heights would be -- wait.

Q Northeast.

A Northeast, oh. Sure.

Q There has been a substantial number of houses built in the northeast section since 1968?

A Yes, sir.

Q Does that affect your opinion as to the direction of Albuquerque's growth?

A They are running out of land.

Q Now, going back to 1968 when you decided to come to Albuquerque and based upon what you learned about Albuquerque, would you agree or disagree with this statement and I am reading from "This is My Land," Exhibit 384.

MS. HYNDS: 1966, Mr. Fleming, the copyright of 1966.

MR. ARKIN: Yes, that is the one.

MR. FLEMING: Yes.

Q "According to experts Albuquerque's future growth pattern is predetermined. It must take place toward the northwest."

Did you believe that in 1968?

A Yes. Do you want me to tell you why?

Q Yes.

A Because the Albuquerque Public School System in 1968 had already designated areas where they were going to place schools and I think they pretty well know what is happening.

Q Was that one of the groups you talked to before you decided to come to the parish?

A Yes, sir, you bet.

Q Did you, in fact, make your own determination as to the future growth of Albuquerque before you decided to accept the call to the parish?

A Yes, because I thought there was such a future challenge to me.

MR. FLEMING: Excuse me just one moment, your Honor.

(Pause)

Q Would you have agreed with this statement in 1968, Reverend --

MS. HYNES: May we know what you are reading from, Mr. Fleming?

MR. FLEMING: 384, the same page.

Q "In the case of Albuquerque and her future growth, limitations on her boundaries have always existed. Mountains to the east and the federal state and reserve land along the northern, southern and part of the western borders are now virtually containing Albuquerque's future growth."

A That is essentially what I said, yes.

Q Was that your belief when you came to the church?

A Yes.

Q Was that one of your reasons for accepting the call?

A Right.

MR. FLEMING: May I have that map back up, your Honor? It has disappeared.

(Pause)

MR. FLEMING: Judge, can we have a recess?

(Laughter)

Q Reverend, do you think you can come down here and show us about where your church is?

A I think it's even on there.

Q Oh, good.

Would you turn this way so the jury can see it?

A Yes, but let me look first.

(Pause)

A Our church is right there, that little dark spot, and this is Coors Road that runs up and then this goes up to Rio Rancho (indicating).

Q This is the northwest mesa, the northwest quadrant of Albuquerque, is that correct?

A Correct.

Q This area in here constitutes the northwest --

THE COURT: Pardon me. You don't have to kneel down. Turn the chair around. I have been looking at it for two months.

THE WITNESS: The chair is nailed down.

THE COURT: I am awfully sorry --

Q I bet you can handle it, your Honor.

THE COURT: This is not meant as anything personal.

THE WITNESS: My faith is great, but I can't move the chairs.

Q Do you recognize the southern boundary of Rio Rancho (indicating)?

A Yes, right.

Q The developed portion here (indicating)?

A Then this is Paradise Hills (indicating).

Q That's right.

Would you agree that Rio Rancho straddles the northwest, that is, starting from the northwest down here?

A Sure, absolutely.

Q Would you agree with this statement as of 1972:

"So as a result of this straddling of the city on these three sides, the growth can go in just one direction - one direction only, and that happens to be to the westerly and northwesterly side from the city of Albuquerque in the very path from Rio Rancho Estates is located. As a matterof fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us. Because this entire growth area is straddled by Rio Rancho Estates."

Would you have been agreed with that in 1972?

A Yes, because it said west and northwest.

Q Right.

And am I correct that western expansion, direct western expansion still depends, in some part, upon acquiring title by Westland in the Atrisco properties?

A Yes. That is a real bugaboo, I guess.

Q So that has to be done first?

A That's right.

Q Am I correct, also, that Westland Corporation was not even formed unitl sometime about 1972 or so?

A That's correct.

Q So that prior to that nobody was acquiring title to any great degree?

A No, nothing.

Q Would you agree that the expansion of Albuquerque logically would be in the direction towards Rio Rancho Estates and to and through it?

A Yes, and bring it over to the Rio Puerco and you have it made.

Q Where is that Rio Puerco?

A It looks like that line --

THE COURT: Would you show us what you mean, Reverend?

THE WITNESS: Yes. It is this -- no -- yes, it is. That is the Rio Puerco Valley (indicating).

Q Am I correct that there is a municipal airport planned for that particular portion of that area?

A Yes, sir.

The municipal airport is planned for an area someplace in about here (indicating).

Q Right.

Can you show me where Taylor Ranch is?

A Taylor Ranch --

Q It's not on this photograph.

A Yes, it is.

Well, no, not as far as houses.

Q Right.

A But it is in this area (indicating).

Q And Volcano Cliffs?

A In fact, Taylor Ranch reaches almost up to the boundary of Paradise Hills.

Q All right.

Volcano Cliffs?

A Volcano Cliffs would be just south and a little bit west.

Q Paradise Hills?

A Paradise Hills is here (indicating).

Q Rio Rancho?

A Is here (indicating).

Q Do you see that as the path of development and growth of Albuquerque?

A Yes.

I just take this and fan it (indicating).

Q Was that your belief in 1968?

A Well, I was not sure about that Atrisco grant at that particular time as I am now.

In 1968 I would have said it would be west, Albuquerque could only be west of itself.

Q Well, west would be into the Atrisco grant, would it not be?

A Yes. And because of the hangups on the land grants and what have you, I would now say westerly and north.

Q I am confused, frankly.

A Are you?

Q Yes.

A Well, I fanned it out to kind of show you the area.

But it can grow west of a given line, say I-40.

Q Right.

A And north.

Q And where is I-40?

A I-40 -- this should be I-40 coming straight through here (indicating).

Q And north from there, is that correct?

A Yes.

All of this.

When I do this, the Atrisco grant, I think, goes up like this in this area (indicating) so that is the area I put your wand and I said this is the way it can grow without too much obstruction (indicating).

Q And was that your belief in 1968, when you came with the church?

A I said before to that question that I was not acquainted with the Atrisco grant situation at that time.

Q I see.

A And that's when I would have said it could go west any direction.

Q But now you are acquainted with the Atrisco grant problem.

A Yes, and it is being hampered.

Q Now, you say that this was you belief when you came to Albuquerque.

But what about the development on the northeast, were you aware of that?

A Oh, sure, sure. I knew that there was still a good possibility of many more homes at that particular time.

Q That being the case, why did you hold the view that the city's ultimate growth would be the northwest, that it was predetermined?

A Well, when the school board says we are going to build a high school, we are going to build a grade school here, we are going to build a grade school there and we are going to build a grade school in Corrales, that seemed to me indicative of the fact that they knew which way the city was going to go, too, or grow.

Q Did you have any view as to whether the land in the northeast quadrant was limited or unlimited?

A I knew it was limited up to the boundaries that were previously stated.

Q Have those schools been built, by the way?

A Yes, sir. They have a big high school and they have added to it already, and a grade school has been built in Rio Rancho; Siera Vista in Paradise Hills has been added to, and in Corrales the school is very nice now.

MR. FLEMING: May I have just a moment.

(Pause)

Q Thank you, Reverend.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

XXX BY MR. KAUFMAN:

Q Reverend Rupley, my name is Allan Kaufman.

You have testified you have been in Albuquerque since 1969, is that correct?

A Right.

Q And you testified that there is your Lutheran Church on the northwest mesa, is that right?

A Right.

Q Any others?

A Any other Lutheran Churches on the west side of the river?

Q Yes, sir.

A Yes. Our Saviour Lutheran is located on Atrisco, which is south of I-40.

You see, the boundary of Albuquerque is marked by a street that is called Central and that used to be Highway 66.

Q Right.

A And then the east and west boundaries are the railroad track.

Q Right.

A So anything north of Central and west of the railroad is considered northwest.

Q I understand.

A All right.

Q You testified that the other Lutheran church on the west side, though, is on the Atrisco grant property, is that right?

A No. It's on a street called Atrisco.

Q On Atrisco?

A Yes.

Q Where is it physically located?

A South of I-40 about five blocks, and east of Coors about seven blocks or eight.

Q Have you ever heard of a development in that general vicinity called West Gate Heights?

A Now, that's on out farther.

I can show you on the map.

The church that I am speaking of is about 54 and Atrisco -- and your West Gate Heights is off of 98 and it is south of Central, by the way, too, so it is southwest.

Q Right.

And you are familiar with the development called the West Gate Heights, is that right?

A Yes.

Q Are you aware that that development is situated on Atrisco land grant property?

A Yes, sir.

We also have members there.

Q So I gather at least that part of the Atrisco land grant property was capable of development, is that correct?

A This is correct, and also their industrial site.

Q You are aware of the industrial park as well?

A Yes.

Q And you testified that Westland Corporation was formed in 1972?

A Right.

Q You are not aware that it was formed in 1968?

A Did it really get off the ground in '68?

Q I am asking if you are aware that Westland Corporation was formed in 1968.

A No, I was not.

Q Now, you testified about a number of other developments in the northwest section, Paradise Hills being one of them.

You are familiar with Paradise Hills?

A Yes.

Q Does your parish serve people in Paradise Hills?

A Well, when I first came, most of the members were from Paradise Hills.

Q Do you know how large Paradise Hills is?

A About, give or take a few hundred, I'd say 3800.

Q 3800 people?

A Yes.

Q And do you know what percentage of the entire property owned by Paradise Hills is occupied by the developed portion of Paradise Hills?

A I couldn't give you a good answer on that.

Q Is Paradise Hills fully developed?

A No.

Q Are you familiar with Volcano Cliffs?

A Yes, sir.

Q Is Volcano Cliffs fully developed?

A No. That was owned by D.W. Falls.

Q Approximately how many people are there in Volcano Cliffs?

A I would doubt whether it was more than 1200. I can't give you a good answer on that question.

Q And you are familiar with Taylor Ranch; is that right?

A Taylor Ranch is a development or Dale Bellamah Corporation, and they are planning, in their long range, 10,000 homes.

Q And do you know over what period of time their plan covers?

A I think it covers from now until sometime in the eighties.

You notice I said "think". I'm not positive on that, either.

Their whole master plan, I think has been accepted, and it will be part of Albuquerque, by the way, the city.

Q It will be annexed to the city?

A Yes, sir.

Q And is there an additional vacant land up there in the northwest mesa aside from Paradise Hills, Volcano Cliffs and Taylor Ranch?

A I think that pretty well covers it.

Q I believe you testified that this is Paradise Hills, is that correct (indicating)?

You can come down off the witness stand.

A I was going to ask his Honor whether I may.

THE COURT: Yes, you may.

Q This is Paradise Hills (indicating)?

A That is Paradise Hills

Q And this part that is outlined in read is the developed portion, is that right?

A Right.

Q And this down here is Volcano Cliffs (indicating)?

A Now you are pointing more to Taylor Ranch.

Q Taylor Ranch is over near by the river?

A This is the Albuquerque University and then straight west of it is your Volcano Cliffs area. That is a strip right in here. Then you have to go a little bit north to where this Montonio cross-- it does not cross yet, but it comes across, and this would be the Taylor Ranch and this goes up to that far on the map (indicating).

Q Do you see all these what appear to be bladed roads in the photograph?

A Yes.

Q Do you know what subdivision that is? These are bladed roads that are up on the lava escarpment?

A I don't know whether that is part of Volcano Cliffs or part of Taylor Ranch area.

I was under the impression or was told that the Taylor Ranch ultimately will go up to about where that line is, which is the south boundary of Paradise Hills (indicating).

Q Reverend Rupley, are you aware that Paradise Hills is 8,000 acres?

A I would say that's probably fairly close.

Q And are you aware that Volcano Cliffs is approximately 4,000 acres?

A I think that they have option on more than that.

Q In the northwest section?

A Taylor Ranch I am talking about.

Q I am talking about Volcano Cliffs.

A I mean -- oh, Volcano Cliffs?

Q Yes.

A Yes, because they own on top of that mesa, too, where the lava flow came down.

Q And are you aware that they had master planned for building on that lava flow?

A. Yes, sir.

I'm aware, also, that they gave a portion of that land to the city for a golf course.

Q By the way, I believe you testified that there are proposals for a municipal airport out on the northwest mesa.

A Yes.

Q Are you aware that that is land that constitutes part of the Atrisco land grant?

A Yes, sir.

Q Taylor Ranch, I believe you testified, is master planned into the eighties -- did you say 10,000 homes?

A I think that's correct.

Q Do you have any opinion with respect to the northwest mesa in Bernalillo County as to how long it will take for all the land that is available in that section to be filled up?

A You know, that's the most difficult question to answer.

West of our city is probably the richest uranium deposits in the world, there are coal deposits--

Q Reverend, let me interrupt you.

You are talking about way out into the Rio Puerco?

A Right.

Q I am talking about east of the Rio Puerco, west of the river, the section you defined as the northwest quadrant.

A Yes. But I feel I got to explain this to you in order to give you an answer to your question, sir.

Q You have to explain the uranium deposits out in the Rio Puerco?

A Right, because if they are developed to their high point, if there is centrifuge placed in there, a lot of these people are going to be living in this area that we are talking about and working there, as they do already.

Q Is there a centrifuge place there now?

A No, but they are talking about it.

Q How long have they been talking about that in the Albuquerque area?

A I think it came to our attention through

Senator Montoya and then through Senator Pete Dominici, and I'd say within the last two years.

Q That was not being bandied about back in the mid or late 1960's, was it?

A Oh, it may have been mentioned, sure.

Q Are you aware of it as being a major factor back in Albuquerque in the sixties?

A I was not. It was before my time.

Q Now, with respect to the rate of growth that Albuquerque has experience over the last, say, fifteen years, how long would it take, in your opinion, for all the land that is available in the northwest section of Albuquerque to become completely developed, just talking about the Bernalillo County section of the northwest part of Albuquerque?

A There are too many contingencies that I can't adequately answer your question.

Q Yousaid Albuquerque's growth as of now is going to go in this direction and you spun the pointer over (indicating). Do you recall?

A Yes.

Q You included Rio Rancho Estates?

A Right.

Q And we are agreed, are we not, that there is plenty of available developable land in the northwest section south of Rio Rancho --

MR. ARKIN: Objection to the word "plenty".

THE COURT: I agree with that.

Just ask the witness for facts. You are not testifying, Mr. Kaufman.

Q We are agreed, are we not, that there is land available in this section of Albuquerque for development, is that right (indicating)?

A Definitely.

Q And what I am trying to find out now is when you spun this ark and it included Rio Rancho, when we are talking about that growth reaching Rio Rancho Estates, necessarily reaching Rio Rancho Estates in the next five years or in the next few decades.

A I think it is quite obvious of all the communities in that particular area, Rio Rancho Estates is growing the fastest.

But with respect to where the growth has to go, in other words, where the growth has to go determined by --

A It has to go exactly the way I used that wand.

Q Correct.

THE COURT: Wait.

I think one of the problems here, Mr. Kaufman, is that the assumption in your questioning is that it grows --

THE WITNESS: Without Rio Rancho.

THE COURT: -- one on top of the other, one next to another, in that fashion, and I gather what the witness was trying to indicate you can skip areas that are in the confines of his scanning with the pointer.

MR. KAUFMAN: I agree, your Honor, you can skip, but we are talking about --

THE COURT: Your questions are based on the inference, it seems to me, or supposition that growth is one next to another until you reach a point.

MR. KAUFMAN: Your Honor, I am talking about necessary direction of growth.

THE COURT: I misunderstood your question.

Q Reverend Rupley, it is true, is it not, that Albuquerque does not necessariy have to grow right into Rio Rancho; is that correct?

A I don't see how it could help. It is doing it rightnow.

Q It is true, is it not, Reverend Rupley, that Albuquerque can grow into Paradise Hills, into

Volcano Cliffs, into Taylor Ranch and into all the rest of the land that is available in Bernalillo County? Isn't that correct? There is nothing to stop Albuquerque from growing in that direction, is there?

A No, any more than there is -- I think if one is going to grow, they are all going to.

Q But Albuquerque can just as easily grow this way, is that correct? There is nothing stopping it from growing in that direction (indicating).

A There is not as much room for growth in that direction.

Q But there is enough room for growth in that direction to accommodate growth for the next few decades, isn't that true, Reverend Rupley?

A I doubt that. A decade is ten years. That is twenty years you are talking about.

Q You testified that Taylor Ranch's master plan is for ten years, is that correct, into the 1980's?

A But now you are talking about into the 1990's.

Q We are just talking about Taylor Ranch itself is planning 10,000 homes into the 1980's, is that right?

MR. FLEMING: The question was decades, your Honor.

Q Is that correct, Reverend Rupley?

THE COURT: No. There was a year given for the plan by Mr. Graham yesterday.

MR. FLEMING: No question about Taylor Ranch. I meant the original question of Mr. Kaufman is decades.

THE COURT: We are back to Taylor Ranch and an absolute date.

Q We are agreed now that Taylor Ranch master plan foresees 10,000 homes somewhere's in the 1980's, is that right?

A I think that's correct, yes.

Q And that is just Taylor Ranch.

Now, there is also Volcano Cliffs, there is also Paradise Hills.

A Right.

Q All of which has land available for development, isn't that true?

A This is true.

Q When Mr. Fleming was questioning you, he asked you on what you based your opinion as to the direction of Albuquerque's growth, and the first thing you mentioned was an organization called COG, I believe, and then you mentioned a Mr. Garvin.

Does Mr. Garvin have any relationship with

COG?

A Yes.

Q What is Mr. Garvin's reliationship with COG?

A That's what I -- I mentioned it.

This is a very little foggy in my mind, but I would call him more or less the executive secretary or something to that effect.

Al Pierce is the head of the Council of Governments, and Jim Garvin --

Q Are you sure that Jim Garvin has any relationship with COG at all, or is it possible that his relationship is with an outfit called AIDS?

A AIDS. I know he is with AIDS-IFA.

Q In forming your opinion as to the direction of Albuquerque's growth, did you consult any documents or reports as to their forecast for Albuquerque's growth?

A I have.

Q Do you know which documents you have reviewed?

A Oh, my goodness, they come out with so many, I couldn't, I could'nt say exactly which one, no.

THE COURT: We will have a short recess.

(Recess)

(The jury left the courtroom)

MR. ARKIN: Mr. Henry Hoffman, who is a defendant in this case and my client, has a dental appointment tomorrow morning at 9:00 a.m. and the dentist might not be done with him in time for him to be here promptly at 10:00.

So with his permission and your Honor's permission, I should like -- I should like your Honor's permission if he is fifteen or twenty minutes late, would that be permitted?

THE COURT: Is that your desire, Mr. Hoffman?

DEFENDANT HOFFMAN: Yes, sir.

THE COURT: Does the government have any objection?

MS. HYNES: Your Honor, again, we don't know what the testimony will be or the cross examination.

We have no objection as long as Mr. Hoffman realizes if there is any testimony introduced against him, he waives his right of not being here.

MR. ARKIN: I am confident there will be no testimony introduced against Mr. Hoffman, and if there is any adduced against him he waives his right to confrontation with respect to it.

THE COURT: Do you agree with that, Mr. Hoffman

DEFENDANT HOFFMAN: Yes.

THE COURT: All right.

MS. HYNES: I notice Ms. Thompson is here if you want to take care of that first.

THE COURT: You talk to her first.

I am sure there is no need for me to get between you two ladies when you may be able to work it out yourselves.

(Recess)

end t

THE COURT: You may proceed.

MR. KAUFMAN: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q Reverend Rupley, one further question about Taylor Ranch.

Are you aware that Taylor Ranch in size is approximately 1500 acres?

A At the present time?

Q Yes.

A I think that is what they have -- they have plotted the whole area, but I think that is the -- added to the city limits there is an agreement that they add as they build and I think your 1500 acres at the present time would be a correct assumption.

Q Is that the acreage on which they propose the 10,000 homes?

A No, they have more acreage than that.

Q What is the total acreage?

A I could not tell you.

Q Do you know what the total acreage of Rio Rancho Estates is?

A I couldn't tell you that either.

Q Are you aware that they have 91,000 acres at

Rio Rancho Estates?

A I knew it was a bunch.

Q Do you have any idea about what the percentage of the development of Rio Rancho Estates is now?

A A tenth of that, approximately.

Q Are you aware that the developed portion of Rio Rancho Estates now constitutes less than five percent of the total portion of that total development?

A I was guessing at the figure.

Q Are you aware that Rio Rancho has been in existence for fifteen years?

A That's correct.

Q Do you have any idea how Rio Rancho land is sold nation-wide?

MR. FLEMING: I object, your Honor.

THE COURT: Sustained.

Q Does your parish cover people who live at Rio Rancho Estates?

A Definitely.

Q Do you know approximately how many of your parishioners live at Rio Rancho Estates?

A Right now it is over half.

Q Fifty percent of your parish is from Rio Rancho Estates?

A Right.

Q Are you aware that practically all of the people who live at Rio Rancho Estates are people who moved to Rio Rancho Estates from other parts of the country?

A I sure am.

Q Are you aware that from 1967 to date approximately only fifty people have relocated from Albuquerque to Rio Rancho Estates?

A I couldn't give you that information.

Q You have testified that Albuquerque right now is growing into Rio Rancho Estates, I believe you testified to that about twenty minutes ago.

A That's right.

MR. FLEMING: I object to that.

THE COURT: Why?

MR. FLEMING: I don't recall anyone testified that Albuquerque was growing into Rio Rancho Estates presently.

THE COURT: Not in exactly those words. Reframe your question.

Q Did you say just a little while ago, Reverend Rupley, that Albuquerque was growing into Rio Rancho right now?

MR. FLEMING: Objection.

THE COURT: He is asking him whether he said it.

A I don't know whether I said that or not. The reason is that Rio Rancho Estates is in another county and your question to me would indicate that you are trying to say that Rio Rancho will become part of Albuquerque per se and I don't think that this is quite possible under the present setup.

Q I am not asking whether or not Rio Rancho will become part of the Albuquerque municipal limits. I am just asking whether or not you testified just a little while ago that Albuquerque's growth was going into Rio Rancho at the present time.

A Yes, because it is considered the greater metropolitan area, part of it.

Q But I am correct, am I not, in stating that the people who live in Rio Rancho and moved to Rio Rancho were people who do not move from Albuquerque, but in fact come from other parts of the country?

A I answered that question.

Q Is that a correct statement?

A I told you that I didn't know the percentages who from Albuquerque moved out there, but I would say the majority moved from other states to the Rio Rancho area. Does that answer your question?

Q Yes.

A Okay.

Q Do you know what the present population of Bernalillo County is now?

A I am trying to think of the last figure I saw, which of course would be an estimate. It exceeds 300,000 I believe.

Q Do you know what the population of Bernalillo County was in 1969 when you came to Albuquerque?

A I would almost say it was 100,000 less, or in that -- 50 to 100,000 less anyway.

Q That is the range?

A Yes, I couldn't give you exact figures, sir.

Q You testified that when you came to Albuquerque you felt Albuquerque could only grow to the west and northwest.

Am I repeating your testimony correctly?

A Yes. May I add a sentence to that?

Q Sure.

A After the northeast area is filled, that's it.

Q So when you were in Albuquerque in 1969, you knew that Albuquerque could grow to the northeast, is that true?

A Yes. I knew there was land still available.

Q So I am correct, then, in saying that it would not have been an accurate statement in 1969 to say as of that date Albuquerque could only grow to the west and northwest?

MR. FLEMING: He is quoting something not in evidence.

MR. KAUFMAN: I am not quoting anything.

MR. FLEMING: I object to it.

THE COURT: Then it is sustained.

Q Reverend Rupley, on direct examination you testified that when you went to Albuquerque it was your belief that Albuquerque could only grow to the west and northwest and I gather you are now qualifying that by saying that that would be true once the Northeast Heihts was filled up, is that accurate?

MR. ARKIN: Objection, that is an unfair characterization.

THE COURT: He is asking the witness whether it properly characterizes it. Let the witness tell us.

Q Is that accurate?

A I think that when I said that, I said that Albuquerque was boxed in and could only go eventually in one direction.

Now, I added a word there.

Q Eventually.

A I said eventually.

Q You have added that word now.

A Right.

Q The word "eventually" comes in because of your awareness that Albuquerque at that time could still grow to the northeast, is that right?

A You are talking about 1969?

Q Yes.

A Yes, sir, certainly I was aware of it.

Q You testified that your opinion as to the direction of Albuquerque's growth was based mainly on checking with the school district or the Board of Education in terms of where they were planning to put schools in.

A Yes, because the Albuquerque public school goes into Corrales, which is in Sandoval County, and also Rio Rancho, which is in Sandoval County.

Q Did you check with the -- withdrawn.

Are you familiar with the Albuquerque Planning

Department?

A Yes, sir.

Q You know that the Albuquerque Planning Department's function is to plan for the future growth of Albuquerque?

A Yes.

Q Did you check with the Albuquerque Planning Department in arriving at your opinion as to Albuquerque's growth ?

A In that master plan it was checked, yes.

Q In what master plan, the church's master plan?

A Yes.

Q Then you were aware of the statement that the Albuquerque Planning Department --

MR. ARKIN: Give us the number of the page.

MR. KAUFMAN: Exhibit No. 60, page 32, No. 12.

Shall I wait before I read it?

MR. ARKIN: Yes.

MR. FLEMING: I object to this, your Honor. This is the '64 plan.

THE COURT: He wants to know whether he knows about it. He says it was in the report. Show it to the witness --

MR. FLEMING: There was a master plan in 1975, as I understand it.

MR. KAUFMAN: I am talking about 1969 when he came to Albuquerque. He couldn't check with the 1975 plan.

MR. FLEMING: Your Honor, the witness testified that he checked with it in connection with his church's application which was in '76.

THE COURT: Mr. Kaufman, that means that was the '75 plan they were referring to.

MR. FLEMING: Maybe I misunderstood.

Q Reverend Rupley, in 1969 when you first went to Albuquerque and surveyed the school system and reached your conclusion about the direction of Albuquerque's growth, did you check with the Albuquerque Planning Department in formulating your opinion?

A I did not at that time, no.

Q Did you check with the Council of Governments in formulating your opinion?

A Indirectly, yes.

Q How did you do that?

A Through AIDS-IFA and the Chamber of Commerce. The greater Albuquerque Chambers of Commerce.

Q When yo said that you checked with the Albuquerque Planning Department in connection with your church's master plan, you are referring to very recently, is that correct?

A I didn't do the checking, Milton Hallet did.

Q Did he check with this metropolitan areas and urban centers plan that was issued in 1975?

A I would well imagine. I couldn't answer for him.

Q Are you aware that the planning department has concluded that there is enough land --

MR. FLEMING: Do you have that?

MR. KAUFMAN: Yes.

MR. FLEMING: May I see it.

Q Were you aware that the Albuquerque Planning Department has concluded that based on densities that have existed in Albuquerque for the past twenty years that there is enough land in the Albuquerque area, just in Bernalillo County, to accommodate over one million people?

MR. ARKIN: I object to the question, your Honor.

The question does not properly in my view or in anybody's view express what the report expresses.

THE COURT: We will have a side bar.

(At the side bar)

THE COURT: Where in the report?

MR. KAUFMAN: It is a combination of the report plus Mr. Carruthers' testimony.

THE COURT: That isn't what you asked this witness. You asked him what that report says.

MR. KAUFMAN: I asked him about the Albuquerque Planning Department.

THE COURT: How does he kow what Mr. Carruthers testified to here? You directed his attention to this exhibit and that is where I was focused when you put your question.

If you are referring to Mr. Carruthers' testimony you had better tell him what Mr. Carruthers testified to here. He doesn't know what Mr. Carruthers said.

(In open court)

BY MR. KAUFMAN:

Q Reverend Rupley, are you aware that the director of the Albuquerque Planning Department has testified that on the basis of this report that there is enough developable land within the Albuquerque area just within Bernalillo County based on densities ratios that have existed for twenty years to accommodate over one million people?

MR. ARKIN: I object, I believe that is a misstatement.

THE COURT: That is what he said. Do you know Mr. Carruthers?

THE WITNESS: Mr. Who?

THE COURT: Why don't you tell the witness who you are talking about.

Q Do you know an individual named George Carruthers?

A Is he with the Albuquerque Planning Department?

Q Yes, he is.

Q Now, you see, I told you ahead of time that we are not in Albuquerque. We arein Bernalillo County.

THE COURT: Pardon me. He is just asking you if you know him, yes or no.

A I may have met him. I don't know him personally.

THE COURT: He doesn't know him.

Q Are you aware that the Planning Department plans for Bernalillo County as well as the City of Albuquerque

A I am aware they have two planning departments.

Q Are you aware that George Carruthers is chairman of both and they work out of the same office?

A No, I was not aware that they do work out of the same office. I thought the planning department of thecounty was on Lomas. They may have certain departments that work together.

THE COURT: You have an answer. He doesn't know they work out of the same office.

Q Do you recall what document you checked when you made your study about what the proposals were for public schools in the Albuquerque area?

A I went to the superintendent of schools' office to find that information.

Q He told you that the school system was planning new schools only in the northwest section?

A I didn't talk to him, sir.

Q Who did you talk to?

A A secretary and I think she pulled out a map and said schools are planned for these areas and she pointed to many areas.

Q Which areas?

A Almost all the areas in the city.

Q The northwest, northeast, southwest and southeast?

A Right, sure.

Q How did that lead you to the conclusion that Albuquerque could only grow to the west and northwest if schools were planned all over the city?

A I didn't say could only grow. I qualified my statement to state that after the Northeast Heights has become completely filled, there is only one way to go, west and northwest.

Q It is true, is it not, that the Northeast Heights is not completely filled as of today?

A This is a true statement.

Q Now, Mr. Fleming read to you from 384 and he read to you the following:

"According to experts Albuquerque's future growth pattern is predetermined. It must take place toward the northwest."

He asked you if that was an accurate statement to have made and you said that it was accurate, is that right?

A This is Jim Garvin's statement.

Q What is Jim Garvin's statement?

A That statement that Albuquerque is boxed in and the only way we can grow is west and northwest.

Q This is Rio Rancho's statement?

A Okay, then they got it from Jim Garvin maybe.

Q He asked you if it was an accurate statement and you said that it was.

A It is. It still is.

Q I am talking about 1969. With the exception that you have now added, is that correct?

MR. FLEMING: I object to that. The exception is to"only"not to"predetermined."

Q Let me read this again.

"According to experts Albuquerque's future growth pattern is predetermined. It must take place toward the northwest."

Now, I gather to make that a completely accurate statement you are saying that that is accurate once the northeast is filled up?

MR. FLEMING: Objection.

THE COURT: Overruled.

You may answer the question put to you by Mr. Kaufman.

A I don't think it is contingent upon what the northeast does. I think it is contingent upon where people want to live.

Q Albuquerque could always grow to the northwest?

A Right.

Q It couldn't only grow to the northwest until every other section of the city was filled up?

A You hem me in with that northwest statement. If you say west and northwest statement I will agree with you wholeheartedly.

Q I am only reading to you what is in this document.

THE COURT: It says predetermined, doesn't it?

MR. KAUFMAN: Yes.

THE COURT: Read the whole sentence.

MR. KAUFMAN: I am.

Q "According to experts Albuquerque's future growth pattern is predetermined. It must take place toward the northwest." That is what the statement says.

A Yes, I will agree 100 percent because when you say northwest you are saying Highway 66 and that quadrant is northwest, I agree.

Q You are saying that is a true statement considering the area --

A The fan area that I mentioned, right.

endt

Q Let me read the next sentence to you from this exhibit, again, in 1969.

A And we understand what the northwest is?

Q Yes.

Central Avenue North.

A Right. Okay.

Q The next sentence says -- let me read both sentences to you so we have it in context.

"According to experts, Albuquerque's future growth pattern is predetermined, it must take place toward the northwest. And this is where most of the new growth activities are taking place."

Is that a true statement to have made in 1969, that most of the new growth activites were taking place in the northwest at that time?

MR. FLEMING: I object to the form of the question, your Honor.

THE COURT: Overruled.

THE WITNESS: I answer?

THE COURT: Yes.

A Considering all the communities that are in the northwest area, there was more growth '69, '70, '71, I believe, in our area than any other area.

Q Are you talking on percentage terms or

Absolute terms?

A I don't know what you mean by percentage terms and absolute terms.

Q When you say there was more growth in the northwest, are you saying that on the basis of percentage growth?

In other words, if there were two people there in a given year and then the next year there were four people, that would be 100 percent growth with an absolute growth of two people.

Do you understand the difference now between percentage growth and absolute growth?

And if you had 100,000 people and the next year you had 150,000 people, that is a percentage growth of 50 percent and an absolute growth of 50,000.

Now, my question to you is, when you say there was more growth in the northwest than anywhere else in Albuquerque in 1969, are you talking in terms of percentage growth or absolute growth?

A I would say it would be percentage growth.

Q In terms of absolute growth, where was the most growth in Albuquerque at that time?

A I could not answer that.

Q Isn't it a fact that most of the growth in

Albuquerque at that time was in the Northeast Heights on an absolute growth basis?

A Numbers of people?

Q Yes.

A This could well be.

Q Going back to the review that you did with the school system.

You said that you spoke to a secretary and she showed you a map of where proposed school sites were and they were all over the city, is that right?

A Right.

Q Were there more schools proposed for the northwest section than any other section?

A I wouldn't say that.

Q Isn't it true that more schools were proposed in the northeast section of Albuquerque than in any other identifiable section?

A Today?

Q No, when you did your study.

A I couldn't tell you, because Iwas more interested in what was going to happen on the west side than I was -- I was not in the northeast, so I was paying attention to my particular locale.

Q So you were just checking to make sure that there was going to be growth to the northwest, right?

A Of what they felt, yes.

Q Right.

But you were not paying attention to whether or not there could or would be growth in any other direction, is that right?

A No. I think I was aware it was going to grow all over.

Q Fine. Thank you.

(Pause)

MR. KAUFMAN: If I may just have one more moment, your Honor.

THE COURT: All right.

(Pause)

MR. KAUFMAN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

XXX BY MR. FLEMING:

Q Reverend, directing your attention to Taylor Ranch, were you aware that Taylor Ranch presently is one and one-half years ahead of its schedule?

A Yes, I knew it was. And they are thinking of building a big shopping center on Montoya and Coors. They are in their plans.

Q So as far as their projections, they are already a year and a half ahead and they only opened a year ago?

A I attended the opening.

Was it a year ago?

Q Well, I don't know. Do you recall?

A I don't know. The time goes so quick. I tought it was the beginning of this past year.

Maybe it was about -- no, it was cold, so it might have been December of 1975.

Q That's about a year ago.

Now, the airport, am I correct that the city is also planning to use substantial acreage around the airport for industrial sites?

A I think the long range plan for the airport is that, so that they can have freight service.

Q Airport plus industry?

A Yes.

Q I assume that will take up a large amount of acreage?

A I can't give you the --

MR. KAUFMAN: Objection, your HOnor, to the large amount.

MR. FLEMING: Quite correct. I withdraw it.

Q Did you know that in 1963 and 1964, people were predicting a population in Bernalillo County by 1985 of between 625 and 825,000 people?

A Projected to what year?

Q 1985, between 625 and 825,000 people.

A This was back in 1963?

Q Right.

Did you know that projection had been made?

A It could well be. I don't know.

Q The city is approximately somewhat over 300,000 people or Albuquerque is somewhat over 300,000 people, is that correct?

A Yes.

Excuse me, I didn't know that was a question.

Q If you put an additional three to 500,000 people in there in the next ten years, where do you think they would be living?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q One further question.

Mr. Kaufman asked you about land available for development at Volcano Cliffs, land available for development at Paradise Hills and Rio Rancho Estates.

Do you recall those questions?

A Yes, sir.

Q Would you care to compare the developments at Volcano Cliffs, Paradise Hills and Rio Rancho?

THE COURT: In regard to what?

Q Quality, livability, environment, desirable.

MR. KAUFMAN: Objection.

THE COURT: Sustained.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness?

MR. ARKIN: Your Honor, may we have a brief side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: Yes, Mr. Arkin.

MR. ARKIN: Your Honor, we have remaining one witness for today. We have made arrangements for others. One of them got sick, somebody else got lost, you know, air transport problems. As a result, we have one witness.

THE COURT: How long will he take?

MR. ARKIN: She, and she will take somewhere in the neighborhood of thirty minutes on direct and I don't know how long on cross.

THE COURT: Do you want to put it over until 2:00 o'clock?

MR. ARKIN: I think we ought to do that.

THE COURT: Okay.

(In open court)

THE COURT: We will adjourn until 2:00 o'clock.

end t

(Luncheon recess)

AFTERNOON SESSION

2:00 P.M.

(In open court - jury not present)

THE COURT: Yes.

MS. HYNES: Your Honor, we have an application in connection with again the situation of experts that the defendants intend to call.

You will recall that Mr. Arkin had furnished us a list and we asked him for more information about the items that were listed on the list in connection with Mr. Godfrey. Mr. Godfrey is listed on the defendants expert list as an appraiser.

Mr. Arkin informed me at the luncheon recess that Mr. Godfrey has advised him that he has three footlockers of material that he is relying on and will rely upon in his tesitmony; that he is preparing schedules apparently based on information in those three footlockers.

We have yet to see the schedules and we have no idea and we haven't seen the information in these three footlockers.

Mr. Arkin states to my surprise, your Honor, that he hasn't seen the material in the three footlockers and, therefore, that material will be unavailable to the government until sometime Sunday afternoon and he expects to put Mr. Godfrey on the stand on MOnday.

Now, your Honor, we have got a second list now from Mr. Arkin with respect to Mr. Godfrey's materials. The second list has some sixty items. It includes a preliminary analysis. Again we have never seen any preliminary analysis,but the material here is staggering and in order for the government to prepare for cross examination or to even be able to conduct a voir dire to know what information this witness is relying upon in connection with preparing whatever schedules he is preparing, we must have adequate time to review these documents.

We served Mr.Godfrey with a subpoena and asked for material four days in advance of his testimony. We believe that is very conservative given the kind of descriptions that we have gotten of the material that Mr. Godfrey is, in fact, going to rely upon.

In any event, the situation with respect to Mr. Carruthers, Mr. Pierce and Mr. Avellanet was that the defendants had access to the materials of Mr. Carruthers and Mr. Pierce and whatever material Mr. Avellanet had months in advance.

The discovery of the government of that

material was turned over months before they testified. They visited Mr. Carruthers' office and had full access to all of his materials as they did with Mr. Pierce.

We have been unable to get access to the material of the defendants witnesses. Indeed, even with subpoenas, we have been unable to get access and now we are told that the afternoon prior to his testifying these three footlockers will be made available to the government.

I submit, your Honor, that we cannot go forward with that kind of testimony which, obviously, is important to the defendants' case and is important to the government's right of cross examination to thoroughly familiarize ourselves with the documents that these experts are supposed to be relying upon. Not only have we had no discovery of these documents, we have not had access to these documents and we are put in a severely prejudicial position by the situation that we have and that we have brought it up to your Honor now three days in a row and it is no nearer to solution now and it seems to be farther from solution now.

MR. ARKIN: First of all, at your Honor's direction we furnished two lists as best we were able to the prosecution. I did have a discussion with Ms. Hynes at the luncheon break and the discussion as related was somewhat incomplete.

I suggested to her I had not seen the documents. I did not suggest to her that whatever schedules Mr. Godfrey was preparing were based on any particular materials.

I do know he is a very knowledgeable appraiser and he probably has all kinds of books and phone books that he relies on generally. I don't suppose any of them will be made into any schedules that will be presented to the Court or utilized in his testimony.

I did say that if she felt herself prejudiced or at some disadvantage because Godfrey is coming in this weekend, that I would hold him over a day or two days and give the government the material so they would not be prejudiced. I do not want them prejudiced -- I do but I am not going to in any unreasonable fashion.

The point is I haven't seen these materials. The man is in Albuquerque. I know generally what he is going to testify to.

I have not read over his source materials. I have not read over his handbooks on appraising lore and when the material is in the city, I want to have a day to prepare the fellow over the weekend and I will then give the material to the government or I will make copies.

THE COURT: What about these three footlockers?

MR. ARKIN: When I spoke to Godfrey, I was in Albuquerque last week, as your Honor knows, and I said, how much material do you have? And he said it filled several footlockers because I wanted to know whether I could take it back in a bundle to New York in my briefcase. He said, no, there were several footlockers. That might have been a habit of speech. He might have just been saying that to me to indicate it was too much to put into a briefcase.

I do know that based upon the list I have provided to Mr. Devorkin and Ms. Hynes that he does have a lot of information much of which, by the way, is in the hands of the government already in various forms.

As soon as I get it, whatever I have, which is proper to turn over, that is, not including, for example, correspondence which he has had with me, which I would consider a privileged communication, I will turn it over to the government.

THE COURT: I think one thing you have to make sure of when Mr. Godfrey appears that he brings with him all the underlying material which is used for any conclusions he is going to reach or any opinions he is going to give.

MR. ARKIN: I want to assure your Honor of that.

THE COURT: I don't want him to get on the stand and find that something that he relied on is not here.

MR. ARKIN: Any schedule which he prepares, which I will seek to have introduced in evidence, any source material or foundation material for that obviously we will have.

THE COURT: When is he showing up?

MR. ARKIN: He is coming in Friday night with his assistant and I am going to see him on Friday night unless I have to go to dinner with my wife. Then I will see him on Saturday and I will see him on Sunday morning and what I will do is I will provide Ms. Hynes or Mr. Devorkin or Mr. Kaufman or all three of them with whatever materials there are.

In the event they feel prejudiced, then I will withhold putting him on the stand until they can familiarize themselves with the material.

I said I will show the prosecution the various schedules which this man has prepared, his work product, which he has with him. I will do that. I haven't really seen it myself except I know he is in the process of preparing certain schedules. He showed me certain drafts of graphs and things like that which he had been working up. I don't have them in my possession. They are not finally done. When they are here, they can have them. I do want a day and a half to prepare my own witness.

THE COURT: You may have to have several days before you put him on .

MR. ARKIN: Your Honor, I am willing to be as accommodating to the government as your Honor wishes me to be.

THE COURT: If you turn it over to them on Sunday afternoon -- what do you call Sunday afternoon?

MR. ARKIN: 3:00 or 4:00.

THE COURT: There is not much left of Sunday.

MR. ARKIN: I will wait and put him on --

THE COURT: You can't put him on the stand then until Thursday morning so they will have three days to prepare.

MR. ARKIN: Fine, your Honor.

MS. HYNES: Your Honor, the other situation is that to the extent that copies can be made of these documents --

THE COURT: You can put him on earlier if the government is finished with them. I must also say to the government that they will have to assign one of the [illegible] with this man and not say, [illegible] night.

[illegible] They have ruled that we cannot [illegible] their position is that we cannot talk to this person.

THE COURT: Why can't they talk to him?

MR. ARKIN: First of all, your Honor, he is an expert and he has worked with us. There is a Sixth Amendment privilege.

Secondly, Mr. Godfrey, who spoke to Mr. Devorkin, unbeknownst to me until Mr. Devorkin and Mr. Godfrey later called me, and he said he didn't want to speak to Mr. Devorkin. He said, if you order me to speak to Mr. Devorkin, I will do it, if you order me to do it and I will not order him to do it.

THE COURT: If he doesn't want to talk to you, he doesn't have to.

MS. HYNES: On a different point --

THE COURT: Let's get this point settled.

MS. HYNES: If that is your Honor's ruling, THE COURT: Okay.

MS. HYNES: With respect to Mr. Arkin's statement that the government has much of this material, we do not have much of this material.

THE COURT: I have overlooked that statement, obviously.

MS. HYNES: Much of this material can be xeroxed and copies made available to us. To the extent that we have to start now and have one lawyer staying out of court, why should we have to wait until Sunday afternoon if a copy can be made and turned over to us?

THE COURT: What difference does it make if one lawyer stays out of court? You have four sitting there. One will take this witness.

You have been alternating witnesses all through this trial and all of you have not been there. There have been times only one of you have been sitting here.

MR. ARKIN: One thing which might be helpful, your Honor, while there may be a mass of material here, I very strongly believe that Mr. Godfrey will rely upon what are a relatively small pile of information to make his --

THE COURT: I made the ruling.

MR. ARKIN: I will give it to them promptly. It may be we won't need until Thursday.

THE COURT: If you don't need until Thursday, you can put him on sooner.

MR. ARKIN: Right, okay.

MS. HYNES: Your Honor, there is one other item and that is again a problem we have raised before and that is on the microfilms, microfiche, excuse me

We have been advised by a microfiche company that makes copies for us that they cannot make copies in less than a two-day turnaround especially when we are given them microfiche that have several hundred pages on them. The microfiche that we have been having turned over amounts generally to at least several hundred pages.

That being the case, if --

THE COURT: You mean on each witness?

MS. HYNES: For example, there was -- some witnesses have more microfiche than others. As Ms. Cross said to your Honor the other day, it wouldtake a day to have the microfiche xeroxed because some of them are very numerous.

The same really pertains to an outside company that makes copies. It makes a difference if we have fewer to give them, but generally when we have had several microfiche to give them, their turn-around is two days and that is on a rush basis.

That being the case, we have to start getting microfiche sooner than the evening before these witnesses are testifying. We simply are not going to be in a position to have hard copies and be able to cross examine them.

THE COURT: Mr. Arkin.

MR. ARKIN: I do know that they have a fiche reader in the office --

MS. HYNES: We have it in court, but one person can work at it at a time.

MR. ARKIN: I will not quibble. If I know two days in advance, I will provide the microfiche two days hence.

THE COURT: Anything else?

MS. HYNES: Count 179 that was going to be raised with Ms. Thompson -- I am sorry, Exhibit 79 --

THE COURT: Exhibit 179 and 179-A which is the basis for Count 79.

MS. HYNES: I resolved that with Ms. Thompson. It is agreeable with Ms. Thompson to have those documents go in with a deletion with respect to 179-A, certain parts of the document which do not relate to the script of the radio commercial. We will make that deletion in those documents.

THE COURT: Where are the exhibits to be marked in evidence?

(Government Exhibit 179 and 179-A received in evidence) xxx

THE COURT: All right, next witness.

MR. ARISOHN: Joyce Davis.

MR. ARKIN: Your Honor, after today's witness, I have undertaken to cull out of the record or had culled out of the record those idiosyncratic parts of the case, as Mr. Fleming referred to them, which have no place in the case and may we present to your Honor orally on the record those particular phrases or statements which are isolated and unusual such that they should not be admitted in as part of any alleged scheme.

THE COURT: Wasn't that part of Mr. Lavinsky's motion the other day?

MR. ARKIN: I don't believe so, your Honor. No, it was not.

MR. FLEMING: It was the idiosyncratic statements by the salesmen to the purchasers. You Honor asked me to list them.

THE COURT: Have you served a copy on the government?

MR. ARKIN: This is not really a copy. This is a memorandum made up by paralegals essentially with which I agree in about 70 percent of the cases and so to give this particular document to the government to my mind would not be a good idea. I can read them very rapidly into the record.

THE COURT: Then you would have to ask Ms. Hynes to answer them. She might as well have it overnight and we can do it much more quickly after she has read them and has the time to formulate her views.

MR. ARKIN: I will have a cutting and pasting job done on this and present the original to your Honor and a copy to Ms. Hynes.

THE COURT: All right.

MR. ARKIN: Fine.

(Jury present)

JOYCE DAVIS, called as a witness by the defense, being first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. ARISOHN:

Q Mrs. Davis, where do you live?

A I live in Rio Rancho, Albuquerque, New Mexico.

Q For how long have you lived there?

A I have lived there for five and a half years.

Q Has that been since 1971?

A That's right.

Q Are you married, Mrs. Davis?

A Yes, I am.

Q Do you have any children?

A Yes.

Q How many children?

A Five.

Q Can you tell the jury the age range of your children?

A My children -- the ages of my children range from twenty-five to twelve and a half.

Q Prior to moving to Rio Rancho, Mrs. Davis, where did you live?

A I lived in New York, Brooklyn, New York.

Q For how long did you live in Brooklyn?

A Eight and a half years.

Q Prior to living in Brooklyn where did you live?

A I lived in Kingston, Jamaica.

Q Jamaica, West Indies?

A Yes.

Q Were your parents Jamaican?

A Yes.

Q Are you currently employed?

A Yes.

Q How are you employed?

A I own and run a janitorial service in Albuquerque, New Mexico, Rio Rancho.

Q Would you briefly describe what that janitorial service is?

A My duties are to take care of the post-construction -- we do post-construction cleanup. We do the interior of the house, clean the interior of the house during construction and after construction we move in and clear the inside of the house, windows, carpeting.

Q Is that your own business?

A Yes.

Q Is your husband currently employed?

A I beg your pardon?

Q Is your husband currently employed?

A Yes.

Q How is he employed?

A He is a heavy duty mechanic.

Q Where is he employed?

A He is employed in Albuquerque, New Mexico. He works for N.C. Riddle.

Q When you first came to Albuquerque and Rio Rancho in 1971, what was your employment then?

A I worked for Rio Rancho.

Q What did you do for Rio Rancho?

A I processed contracts for Rio Rancho.

Q Can you tell his Honor and the jury what duties you had in processing contracts for Rio Rancho?

A In processing contracts for Rio Rancho I made sure that the calculations were right for the money, the price of the land was right and that the customer had signed that he received the land reports and also the protective covenant.

Q When you say you made sure the figures were right, how did you make sure the figures were right?

A I compared it to the price of each lot according to where the lot was situated.

Q How did you know what the accurate price of each lot was?

A Well, we have a list.

Q Mrs. Davis, were you under any instructions from the company as to what to do in the event that the price on the contract was incorrect?

A If the price was below what was stated, it had to remain the same and Rio Rancho had to absorb this cost, absorb the loss.

Q And what did you have to do if the price was above what was correct?

A If it was above, it was returned to my supervisor and she would take care of it.

Q Was the contract processed?

A No.

Q Were you under any instructions as to what to do if the contract was not properly initialed?

A It could not be processed.

Q For how long did you work in Rio Rancho Estates contract processing office?

A Eight or nine months.

Q Excuse me?

A Eight or nine months.

Q What was your next job?

A My next job was registered nurse.

Q Where was that?

A That was in the city of Albuquerque at St. Joseph's Hospital.

Q For how long did you work as a registered nurse?

A I worked for four years as a registered nurse.

Q What were the circumstances under which you left the hospital?

A Well, I came to New York to get my daughter married, and then I suffered -- the very day after I got here I suffered -- I was mugged by four boys and I suffered injury to my right middle finger, and on returning to work I was unable to do my duties as a nurse, perform my duties as a nurse.

Q Is that how you came to form your janitorial business?

A Yes.

Q You stated that your janitorial business was involved in post-construction cleanup.

A Yes.

Q Did you operate that business throughout Albuquerque?

A Yes.

Q Do you advertise for business?

A Yes.

Q Where do you advertise for business?

A I advertise in the yellow pages of the telephone book.

Q Can you tell us percentage-wise what portion of your business, since you started it, has been in the northwest of Albuquerque?

A About ninety percent.

Q When you say you advertise in the yellow pages, is that the Albuquerque Yellow Pages?

A Yes.

Q Mrs. Davis, when did you first hear of Rio Rancho?

A 1969.

Q Under what circumstances did you hear of Rio Rancho?

A My brother had invited me to a dinner, to go with him to a dinner and asked me if I was interested. I said yes.

Q Do you recall where the dinner was?

A It was in Brooklyn, New York.

Q Did you go together with your brother?

A Yes.

Q Did your husband go?

A No.

Q Do you recall when the dinner was held?

A What did you say?

Q Do you recall when the dinner was held?

A Yes.

Q When was it held?

A It was in August of 1969.

Q Do you recall the name of the company which ran the dinner?

A Yes.

Q What was the name of the company?

A ATC Realty.

Q Can you describe for his Honor and the jury what you recall about the dinner party?

A Oh, I recall that my brother and I went by car and when we entered the room of the restaurant there were about 60 to 75 people seated in the room.

Shortly after we went in we sat down at a table and then dinner was served.

After the dinner was served, a gentleman got up to speak and he said that he was going to show us a film, and this film concerned property that was for sale.

Q Did you see the film?

A Yes.

Q Did the gentleman speak further after the film?

A Yes.

Q Tell us what he spoke about.

A Well, he spoke about the property. He said that if we were interested in owning some of this property we should indicate.

Q How did he ask you to indicate?

A Well, we raised our hands to indicate that we wanted to buy some of this property, we were interested.

Q Did you raise your hand?

A Yes.

Q What happened then?

A Well, a lady came over to the table to sit with us and she had some folders in her -- well, with her, and she placed them on the table.

Q Did you buy property that night?

A Yes.

Q Do you recall how much property you bought?

A I bought 1.9 acres.

Q Did you know whether or not that property was developed?

A Yes.

Q Was it developed?

A No.

THE COURT: What do you mean by "developed"?

MR. ARISOHN: Your Honor --

Q Mrs. Davis, did you know whether or not the property had utilities on it?

A Yes, I did know that it didn't.

sxxxx (Defendants Howard Friedman and Henry

Friedman Exhibit JU marked for identification)

Q Mrs. Davis, let me show you Defendants Exhibit JU for identification, and ask if you can identify this (handing).

A Yes.

Q What is it?

A This is a purchase agreement.

Q Is that your signature on it?

A Yes.

MR. ARISOHN: We offer it.

MR. KAUFMAN: No objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit JU received in evidence)

xx

Q Mrs. Davis, let me direct your attention to the portion of the contract I am pointing at, and ask, are those your initials (indicating)?

A Yes.

Q Were you told anything at the time you wrote your initials or asked to write your initials on the contract?

A Yes.

Q What were you told?

A I was given land reports, a copy of the land reports, and I was given a protective covenant.

(Defendants Exhibits JV, JW, JX and JY marked for identification) xxx

Q Showing you Defendants Exhibits for identification JW, JX and JY, would you look at those and see whether those are copies of the documents you received that night?

(Handing)

A Yes.

MR. ARISOHN: I offer them.

MR. KAUFMAN: No objection.

(Defendants Exhibits JV,JW, JY, respectively, received in evidence) x

Q Mrs. Davis, prior to your signing the contract, did you read it?

A Portions of it, yes.

Q Prior to initialing your initials on the contract, did you read what you were initialing?

A Yes.

Q You testified you bought 1.9 acres.

A Yes.

Q Where were the 1.9 acres?

A It was situated in Unit 9.

Q For what purpose did you buy the 1.9 acres?

A I bought this for investment.

Q Did you buy those 1.9 acres of your own free will?

A Yes.

Q Did you feel that you were high pressured into buying the 1.9 acres?

A No.

Q Did you feel you were pressured at all into buying the 1.9 acres?

A No.

Q By the way, did your husband know you were buying the 1.9 acres that night?

A No.

Q Whose money did you use to buy the 1.9 acres?

A Well, I worked as a nurse and I was drawing my salary which could take care of it, so I did it all on my own.

Q When you purchased the 1.9 acres in 1969, were you aware at that time that you could cancel the contract?

A Yes.

Q What was your understanding of the cancellation .provision?

A Well, I understood that within 72 hours, if

I did not --

Q Excuse me. I am talking about the cancellation provision.

A Oh, yes.

If I went to see my -- I had to go to see my purchase in six months, within six months I should visit the property, and if for any reason I did not like what I saw, I could receive my money back in full.

Q Do you know what a vacation travel allowance is?

A Yes.

Q What is it?

A It is a bonus that is given to you if you take advantage of the privilege of visiting your property within six months.

Q What is the bonus?

A Mine was $200.

Q Do you know how the bonus worked?

A It was applied to the final purchase of the property.

Q After signing the contract, did you receive an additional opportunity to cancel the contract?

A Yes.

Q What was that?

A That was the provision on the law that I could rescind the contract within 72 hours of my purchase.

Q Let me show you what has been marked Defendants Exhibit JV for identification, and ask if you recognize that.

(Handing)

A Yes.

Q What is it?

A This is a rescindent notice.

Q A rescission notice?

A A rescission notice.

Q Is this the rescission notice you received from Rio Rancho?

A Yes.

MR. ARISOHN: We offer JV for identification.

(Pause)

VOIR DIRE EXAMINATION

XXX BY MR. KAUFMAN:

Q Mrs. Davis, is this your handwriting on here?

A Yes, sir.

This is mine (indicating).

Q That is your printing?

A Yes.

MR. KAUFMAN: No objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit JV received in evidence)

xxx

CONTINUED DIRECT EXAMINATION

BY MR. ARISOHN:

XXX

Q Mrs. Davis, let me show you JU, which is your contract, and JV, which is the rescission notice you just identified.

The contract is dated August 5, 1969, is that correct?

A Yes.

Q And the rescission notice is dated September 16th, and you just testified you had 72 hours after September 16th to rescind.

Can you explain for his Honor and the jury how it is that you signed the contract on August 5th and then had 72 hours after September 16th in order to rescind?

A Well, the contract was signed in New York and the rescission notice was sent from Albuquerque, New Mexico to me.

It did take some time for this to be processed to get there and then to return to me.

Q Did you take advantage of the 72 hour rescissio notice?

A No.

Q Did you take advantage of the six month visitation privilege on your purchase in August of 1969?

A No.

Q Did you ever tell your husband about the purchase you made in August 1969?

A Eventually I did.

Q In fact, did you and your husband ever attend -- well, strike that.

Did you and your husband purchase additional land at Rio Rancho?

A Yes.

Q When was that?

A August 1970.

Q How did that happen?

A That arose out of some incident -- a couple of incidents that happened at home.

Q How did you come to buy the land in August 1970?

A We decided, my husband and I decided we wanted to move out of New York, and so we decided together that we wouldpurchase an additional homesite in Rio Rancho and I called them and this --

Q Who did you call?

A I called my sales representative at 59th Street.

Q Was that ATC?

A Yes.

Q How did the transaction take place, if you remember?

A Well, I called up the representative, who was Mrs. Blum, and I asked her could I come over.

She said, "Come right over."

So I went over to the office and I told her of my or my husband and mine, of our desire to move to Albuquerque and to purchase additional land and there we started from there.

Q Did you sign another contract?

A Yes.

Q Did you take the contract home for your husband to sign?

A Yes.

Q At the time you signed the second contract, were you given any reports?

A Yes. I received another one and I also received another protective covenant.

Q Do you recall what unit the land you purchased in August 1970 was in?

A Yes.

Q What unit was it in?

A Unit 24.

Q Did you expect to use the land in Unit 24 as the homesite you wanted to build on?

A No. I decided to take advantage of my exchange privileges.

Q Did you visit Rio Rancho within six months of your second purchase?

A Yes. We both did.

Q When did you visit?

A A month after we bought.

Q That would have been --

A In September of 1970.

Q How did you get to Rio Rancho?

A We went on one of the ATC tours.

Q How long were you in the Albuquerque area on the tour?

A Oh, four or five days.

Q Do you recall where you stayed during the tour?

A We stayed at the Panorama Inn.

Q Where is the Panorama Inn?

A Situated in Rio Rancho.

Q Did the tour have a schedule of events?

A Oh, yes.

Q Did you receive a copy of the schedule?

A Yes.

Q Did you stick to what the schedule called for?

A No.

Q What did you do which was not on the schedule?

A We were -- my husband and I rented a car to take us wherever we wanted to go.

Q How did you go about renting a car?

A The tour guide assisted us in renting a car.

Q Was that the ATC tour guide?

A Yes.

Q Do you recall his name?

A Candy -- all I know is Candy.

Q Would that be Candy Miller?

A Yes. She is now Mrs. Miller.

Q Was it also Mr. Monaco?

A Yes.

Q Will you tell his Honor and the jury what you did when you had the car?

A Oh, we followed the bus to Santa Fe and we went all in and around Albuquerque, and on Saturday we went to church.

Q When you asked the people at Rio Rancho for a car, did they suggest that you shouldn't take one?

A No. They assisted us in getting one.

Q Did they give you any fus about going off by yourselves?

A No.

Q When you drove around in your car, did a salesman go with you?

A No.

Q During your stay in Albuquerque on the ATC tour, did you get to see your properties in Unit 9 and Unit 24?

A Yes.

Q When you saw your properties in Unit 9 and Unit 24, were you satisfied with what you saw?

A Yes.

Q Did you see what you expected to see?

A Yes.

Q At that time that you were on the tour, did you pick out a house?

A Yes, we chose a house.

Q Did you work out the mechanism for exchanging your lot from Unit 24 into where you were going to build your house?

A Yes.

Q Can you tell the Court and the jury how that worked?

A Well, all the money that we had paid on the lot in Unit 24 was transferred to the purchase of the other lot -- yes, it was transferred over to the purchase of the other lot that we wanted to build on.

Q Were you shown lots on which you could build a house?

A Yes.

Q Where were you shown lots?

A Unit 11.

Q Was there building going on in Unit 11 at that time?

A Yes.

Q Did you choose to exchange your Unit 24 lot into Unit 11?

A No.

Q Why not?

A Well, because I did not -- we both agreed that we did not want to clean septic tanks and my family was a large enough one at that time, so we decided -- we inquired whether there was any other place available beside that, we did not have -- there were no paved roads in that area, and coming from New York, of course, you don't want to live in a place like that.

Q Did you receive any pressure of any kind into not exchanging your lot into Unit 11?

A No.

Q If you wanted to exchange you lot into Unit 11, could you have done so?

A Yes.

Q Aside from Unit 11, were you shown any other exchange lots?

A No.

Q Were you shown a lot in Corrales Heights?

A Afterwards, yes.

Q Was that where you built your house?

A Yes.

Q How big was the lot you were shown in Unit 11?

A Half an acre.

Q And how big was the lot you were shown in Corrales Heights?

A Quarter of an acre.

Q Did you know that in order to exchange into Corrales Heights, you would have to pay an additional sum of money?

A Yes.

Q And yet you chose Corrales Heights over Unit 11?

A Yes.

Q Did you feel that because you were paying additional money and because the lot in Corrales Heights was smaller than the lot in Unit 11 you were being cheated?

A No.

I -- I asked the salesman, and he said, "Well, look for yourself. Here are facilities that we don't have up there."

And I figured it out for myself that there was underground utilities, there were direct sewage and there were paved roads and curbs, so the land was more valuable.

Q When did you move to Rio Rancho?

A I moved there in 1971.

Q After having moved to Rio Rancho - strike that.

Prior to moving to Rio Rancho, did you

recommend Rio Rancho to any friends or relatives?

A Yes.

Q Did you recommend it as a good investment?

A Yes.

Q Did you recommend it as a good place to live?

A Yes.

Q Did any of your friends or relatives buy land at Rio Rancho after you made the recommendation?

A Yes.

Q Did any of those friends or relatives who bought land after your recommendation by it as an investment?

A Yes.

Q Do any of them now live there?

A Yes.

Q Has any person you recommended Rio Rancho to as a good investment ever complained to you about your recommendati-n?

A No.

Q By the way, as a result of the recommendations that you made, did the compnay give you anything?

A Yes.

Q What did they give you?

A For recommending and actually causing people to buy, ten people to buy in two months, I received a half acre of land free and clear.

Q After you moved to Rio Rancho in 1971, you still owned the 1.9 acres in Unit 9?

A Yes.

Q Did there come a time, Mrs. Davis, where you had financial difficulties in making the payments on that land?

A Yes.

Q What happened?

A Well, I thought about my sixty-day -- I thought about losing my land within sixty days or after sixty days of non-payment, so I went into the office, to the sales office, and asked them if they would take back part of the land, and they said yes.

Q What happened to the money that you had paid in on the land they took back?

A It was applied to the portion of the land which I kept.

Q How much land did you keep?

A I kept one acre.

Q After that time,Mrs. Davis, did you continue to have financial difficulties in making the payments on the one acre?

A Yes.

Q What happened then?

A I did the same thing; I went in again and asked them to cut back on the amount of land that I had.

Q Did they do that?

A Yes.

Q And what happened to the monies which you had paid in on the amount --

A It was, again, applied to the remaining portion of land which I kept.

Q Did you know, Mrs. Davis, what the company's rights were under the contract you signed if you failed to make payments?

A Yes.

Q What was it?

A That they would reclaim the land after non-payment for sixty days.

Q And what would happen to the money?

A I would lose it all.

Q Do you still own that half acre?

A Yes.

Q Are you continuing to make your payments?

A Yes.

Q Aside from the half acre which the company gave you in Unit -- by the way, what unit was that in, the land the company gave you as a result of your recommendations?

A Oh, Unit 6.

Q Aside from that half acre in Unit 6 and the half acre you bought in Unit 9, do you own any other land at Rio Rancho?

A Yes.

Q How much land do you own?

A Another half acre, making an acre and a half.

Q How did you acquire the third half acre?

A A friend gave it to me as a gift.

Q Where is that half acre?

A In Unit 21.

Q Do you plan to move from Corrales Heights in the near future?

A Yes.

Q To where do you plan to move?

A To a ranchette, we were purchasing a ranchette.

Q And where is that?

A In Unit 17.

Q How large is the ranchette?

A Five acres.

Q Why are you moving to the ranchette?

A Due to the growth of my business, I need for room to accommodate my vehicles.

Q Are you going to use in any way the three half acres you own at Rio Rancho in buying the ranchette in Unit 17?

A Yes.

Q How are you going to use that?

A Well, Rio Rancho has already applied this to my -- to the purchase of the five acres.

Q How much money will you realize as a result of that application?

A $11,450.

Q And how much is the ranchette, which includes the five acres of land and the house, how much does that cost?

A $60,000.

Q Am I correct that the $60,000 --

THE COURT: Wait, wait, I didn't hear anything about a house.

Q I am sorry.

Are you building a house on the ranchette in Unit 17?

A Yes, yes.

Q How much is the land and the house in the ranchette in Unit 17 going to cost you?

A $60,000.

Q And am I correct, Mrs. Davis, that the three half acres you gave back to the company will be credited for the amount you just stated of $11,500 towards the $60,000 purchase price of the land and house in the ranchette?

A It has already been credited to the purchase.

Q When do you plan to move to the ranchette?

A The house should be finished by the 15th or so of next month.

Q Do you plan to keep horses on the ranchette?

A Yes.

Q Is the house you own in Corrales Heights on the market now?

A Yes.

Q By the way, how much did you pay for the house in Corrales Heights in 1971?

A $28,500.

Q How much have you listed your house for now?

A I have listed it for $56,500.

Q Do you think that is a fair price?

A Yes, I do, because FHA has appraised it for $55,500 about five months ago.

Q Aside from the dinner party you went to in 1969, did you go to any other dinner parties before you moved to Albuquerque?

A Yes.

Q About how many did you go to all together?

A Ten or twelve.

Q Based upon your livingin Albuquerque and Rio Rancho since 1971, will you tell his Honor and the jury whether you have ever seen land sold at these dinner parties through the use of high pressure sales tactics?

A No, I haven't.

Q And also based upon your living in Rio Rancho and Albuquerque since 1971, did you ever see anything at any of those dinner parties that was in the slightest bit misleading?

A No.

Q Did you ever see anything at those dinner parties or hear anything at those dinner parties which was untrue?

A Not to my recollection.

Q Do you believe Rio Rancho has cheated you?

A No. I've gained a lot.

MR. ARISOHN: I have no further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

XXXX BY MR. KAUFMAN:

Q Mrs. Davis, my name is Allan Kaufman.

You testified you worked for Rio Rancho Estates for approximately eight or nine months, is that right?

A Yes.

Q In the contracts processing department?

A Yes.

Q Why did you leave Rio Rancho Estates as far as your place of employment?

A Because I was originally a registered nurse and I wanted to pursue my career.

Q What salary were you paid when you worked at Rio Rancho?

A I guess about $75 a week.

Q You say you are now in the business of operating post-construction janitorial services?

A That's right.

Q And most of your business is in the northwest part of Albuquerque?

A That's right.

Q The business that is on the northwest part of Albuquerque, is most of it in Rio Rancho Estates itself?

A Rio Rancho Estates and the Taylor Ranch, which is --

Q Excuse me?

A Which is situated in the west and northwest.

Q Do you have a contract with Rio Rancho Estates to perform these services?

A Yes, and one with Dale Bellamah and Taylor Ranch.

Q Are there other entities in the Albuquerque area that perform the same services that you perform?

A Well, I would say I am the only person listed in the yellow pages doing this kind of work, but there are other small companies.

Q Do you know who does the work for all the building that takes place in the northeast section of Albuquerque?

A No. How could I?

Q You testified that about 90 percent of your business is in the northwest part of Albuquerque.

About what percent of your business is in Rio Rancho Estates?

A About -- about 60 to 65 percent.

Q By the way, do you know how big Rio Rancho Estates is?

A I imagine 700 -- several thousand square miles.

Q Several thousand square miles?

A No, several, several.

Q Are you aware that it is approximately 91,000 acres?

A No.

Q Do you know how big Rio Rancho was when you first purchased land in August of 1969?

A No.

Q Are you aware that Rio Rancho added approximately 37,000 acres to its property since you purchased in 1969?

A Yes.

Q Were you aware that it went from approximately 55,000 acres to 91,000 acres?

A The exact figures I could not tell you, but I do know that there was some added.

Q When did you become aware of that?

A I think this year.

Q This year?

A Yes.

(Pause)

A Oh, I'm sorry, please.

Q Sure.

A I realize that I am just in the beginning of the year.

Q You mean 1976?

A Yes.

Q Yes. I understand.

At any of the dinners you attended, did anybody ever make any mention of a resale program?

A No.

Q Do you recall any statements being made either by the salesman or the person in the front of the room about Rio Rancho Estates being almost sold out and when we are sold out we will set up a resale program to help you people sell your land?

A No.

Q Did any of your salesmen at the dinners tell you that Rio Rancho Estates was expanding from 55,000 acres to 91,000 acres?

MR. FLEMING: I object to that.

A Would you say that again?

THE COURT: Sustained.

Q Did any Rio Rancho representative at the dinners that you attended tell you that Rio Rancho was expanding in size?

MR. FLEMING: I object. The same objection, your Honor.

THE COURT: Sustained.

Q You testified -- withdrawn.

Mr. Arisohn asked you if you could tell us what happened at that first dinner that you attended, and you said you arrived and there were about 60 to 75 people there, you had dinner, a gentleman spoke to you about a film that you were going to see, you saw a film and then the gentleman spoke to you again about buying property and asked any people who were interested to raise your hand.

Do you recall testifying on direct examination about that?

A Would you repeat that, please?

Q Okay.

Do you remember Mr. Arisohn asking you on direct examination about the first dinner that you went to?

A Yes.

Q And he asked you to tell us what happened at that dinner, and your testimony, I believe, was that there were about 60 to 75 people present, that you sat down and had dinner, that a gentleman spoke from the front of the room about a film you were going to see, you saw the film and then thegentleman spoke again about the property and asked those of you who were interested in buying the property to raise your hand and you raised your hand.

A Not me alone, others did.

Q And other people?

A Yes.

Q About how long was the dinner from when you first arrived until when you left?

A Do you mean the actual eating period or the complete program?

Q Let me ask you this:

Do you recall about what time you arrived at the restaurant?

A About 6:00 o'clock.

nd t

Q Do you recall about what time you left?

A About 10:00.

Q Let me show you what has been marked 347-F in evidence and ask you to read that to yourself and I will ask you whether or not you remember ever seeing that at the dinner?

A I don't remember seeing anything like this.

Q Let me show you 256 in evidence, which is entitled "Confidential Survey" and ask you to open that and read that and I will ask you whether or not you remember seeing that at the dinner.

A Neither.

Q I show you 271 in evidence, which is a map.

Do you recall seeing that at the dinner?

A I think so. Something looking like this.

Q This is a map which shows the Albuquerque area and shows circles emanating out of Albuquerque?

THE COURT: The exhibit speaks for itself. You asked her if she saw it and she said she saw something like it.

Q Do you remember the name of the film that you saw at that dinner?

A No. I remember some of what I saw.

Q Excuse me?

A I remember some of what I saw.

Q Do you remember seeing a film entitled "The West Side Story"?

A I remember some of what I saw in the film. I don't remember the name of the film.

Q I am just asking you if you remember if you saw a film entitled "Your Golden Future"?

Tell us what you remember seeing in the film.

A I remember seeing the name Rio Rancho on a fence, well, on a stone wall, two stone walls, which I recognized when I went to Albuquerque.

I remember seeing either moving equipment digging and men at work on houses.

I remember seeing shrubs, sparse shrubs on land.

I remember seeing the picture of I think it is the back yard of Panorama Inn and swimming pool and people sitting in the back yard and front yard of their homes, which I recognized after I moved there, after I visited there, green lawns, green trees.

Q Is that it?

A Yes.

Q Do you recall anything in the film which stated something to the effect of suppose your town needed four times as much land for new houses, for new churches, for new businesses, can you imagine what wouldhappen to lar values if that were true, do you remember that in the film?

Do you remember anything in the film which talked about how 'buquerque was bounded by three sides and could only grow to the northwest, could only grow in the direction of Rio Rancho Estates?

A I remember him saying it could only expand to the northwest section.

Q You are talking now about the speaker in the front of the room, right?

A Yes.

Q Do you remember that being in the film as well?

A Yes, there was a map there that showed us a few things.

Q A map was in the film itself?

A Yes.

Q Was it a map similar to the map that appears on pages 8 and 9 of this brochure, which is 388?

A Do you mind?

Q Not at all.

A It looked something like this.

Q Now that you have flipped through "This is My Land," Do you remember seeing this brochure at the dinner that you attended?

A I think so.

Q Do you recall whether or not you read it?

A I didn't read it, all of it.

Q Do you recall whether or not you read what appears on page 8?

A No, I don't.

Q You don't recall reading it?

A No.

Q You do recall, though, the speaker in the front of the room saying that Albuquerque was hemmed in on three sides and could only grow to the northwest, which is where Rio Rancho Estates was situated?

A Would you rephrase that, please?

Q Sure.

Do you remember the speaker in the front of the room say-ng that Albuquerque was hemmed in on three sides and could only grow to the northwest, which was where Rio Rancho was situated?

A He said Rio Rancho was in the path of the progress of the extension of the city.

Q You say you bought this land at that first dinner for investment, is that right?

A Yes.

Q What do you mean by an investment?

A Well, I have children and I meant to give it to them.

Q When you say investment you are talking about buying this land and holding on to it for a period of time and then giving it to your children, is that right?

A Yes.

Q You are not referring to holding on to it and then turning around and reselling at a profit, are you?

A No.

Q In 1969 I gather the range of your children's ages was 17 to 5 and a half years old?

A Yes.

Q Do you recall the speaker at the dinner that you attended comparing investment in land to an investment in the stock market, to mutual funds, to savings bank accounts or to life insurance?

A Would you rephrase that, please?

Q I will repeat it, sure.

Do you recall the speaker at the dinner that you attended comparing an investment in land to an investment in the stock market, mutual funds, to savings bank accounts or to life insurance?

A I don't remember.

Q You said you read portions of your contract before you signed it.

Do you remember what portions of the contract you read?

A I read the portions -- yes.

Q What portions did you read?

A I read the portion acknowledging receipt of the land reports and the protective covenant and my exchange privileges.

Q Did you read your property report when you received it?

A Not immediately.

Q Did you receive your property report before or after you signed your contract?

A I received it at the same time.

Q By that time you had already agreed to sign the contract, is that right?

A Yes. There was so much I couldn't read it all at the same time.

Q You say you attended about ten or twelve additional Rio Rancho sales dinners, is that right?

A Yes.

Q Did you buy land at any of those dinners?

A The first time when I went I did buy land.

Q That was when you bought the 1.9 acres?

A That's right.

Q The ten or twelve additional dinners that you attended, did you buy land at any of those dinners?

A No.

Q Where were those dinners held?

A Several places in the city of New York.

Q What was your reason for going to those dinners?

A To take some of my friends to share the wealth.

Q These were your friends who eventually purchased Rio Rancho land?

A I beg your pardon?

Q These were the friends who eventually purchased Rio Rancho land?

A Yes.

Q These were the friends whose purchases enabled you to get the half acre of land free, right?

A Some of them were.

Q Did you receive any money or any credit from Rio Rancho for any of these referrals?

A Yes.

Q How much did you receive?

A $25 credit from one person. If the person kept their property I received $25 for each person who really kept it.

Q When you attended these additional dinners, were you told that the land that you had already purchased was now more valuable?

A No, I found out later.

Q Who did you find out from?

A From the actual land which I gave back which Rio Rancho took back as part of the purchase of my ranchette.

Q You got credit for the higher price that Rio Rancho was then charging for that type of land, is that right?

A Most certainly I did.

Q Do you recall receiving any letters from Rio Rancho Estates that told you that the land that you had previously purchased become more valuable?

A Later after I had lived there I did receive from a realtor.

Q Do you recall receiving a letter addressed to you at 651 Vermont Street in Brooklyn saying that your investment had become more valuable?

MR. FLEMING: May I see the letter?

MR. KAUFMAN: I am going to mark it and offer it.

(Government Exhibit 2007 marked for identification)

xx

Q I show you what has been marked 2007 and ask you to read it to yourself.

(Pause)

A Yes.

Q Do you recall receiving that?

A Yes, several.

MR. KAUFMAN: The government offers 2007.

MR. ARISOHN: We have no objection.

(Government Exhibit 2007 received in evidence)

xx

Q Mrs. Davis, this was a leter that you received when you were behind in your payments, is that right?

A Yes.

MR. KAUFMAN: If I may just read the first two paragraphs, your Honor.

(Mr. Kaufman read from Government

Exhibit 2007 in evidence to the jury)

Q Mrs. Davis, do you remember at any of those approximately ten or twelve dinners that you attended the speaker talking about how Albuquerque was bursting at the seams?

A Yes.

Q Do you remember that language ?

A Yes.

Q AT any of those dinners that you attended do you remember sales people calling holds on property?

A No.

Q You have no recollection of sales people at the end of the speaker's presentation calling out and saying, hold item 4, hold item 6?

A Hold what?

Q Hold Item 4 or Hold Lot 4. Do you have a recollection of any of that ever happening?

A They hold their hand up like this (indicating).

Q The sales people would?

A Yes.

Q What would they say?

A Well, someone came over to them and found out what they wanted.

Q The salesman didn't saying anything. When the saleman held his hand up he didn't say anything?

A Someone came over and found out what we wanted at that dinner.

Q What I am asking is whether the salesman held his hand up, did he say anything so that everybody else in the room could hear him?

A I don't recall.

Q Are you aware from your employment with Rio Rancho Estates that it was standard company procedure to have sales people stand up and call holds at each and every dinner at which Rio Rancho land was sold?

MR. ARISOHN: Objection, your Honor.

THE COURT: If she knows.

MR. FLEMING: I object.

Q Are you aware of that?

A Would you repeat that, please?

Q As a result of your employment at Rio Rancho, are you aware that it was standard company procedure and policy to have sales people stand up and call holds out loud at the end of the speaker's presentation at each and every dinner at which Rio Rancho land was sold?

A I would like to know how it would influence my -- my job there would influence that or how would I know?

Q I am asking you if you do know. If you don't know, you say no.

A No.

THE COURT: She said no.

Q At any of the dinners that you attended, do you recall the speaker in the front of the room making announcements that a certain sale had been consummated or he made an announcement saying delete a certain item or delete a certain parcel?

A Yes.

Q Do you recall that happening?

A Yes.

Q Are you aware that any of those deletion calls for sales calls were inaccurate?

MR. ARKIN: Objection.

THE COURT: Overruled.

Q You testified that you bought your second piece of land in August of 1970, is that right?

A Yes.

Q That was not at a dinner, is that correct?

A I beg your pardon.

Q Was that at a dinner?

A No.

Q That is when you went to the offices of ATC?

A Yes.

MR. KAUFMAN: Is that contract in evidence?

MR. ARISOHN: No, sir.

Q Do you recall how much you paid for that half acre inAugust of 1970?

A No, I don't remember the exact figures.

Q While we are looking for that contract, Mrs. Davis, what was your reason for buying this half acre in Unit 24 in 1970?

A To take advantage of the exchange privilege.

Q At this time you bought the land to relocate to Rio Rancho, is that right?

A That's right.

Q You could have traded in a half acre of what you owned in Unit 9 in order to move to Rio Rancho, couldn't you?

MR. FLEMING: I object to that, your Honor.

THE COURT: Overruled.

MR. FLEMING: I base my objection on speculation.

THE COURT: Overruled. She said she knew she had that on the contract she signed.

MR. FLEMING: It didn't happen so I didn't see the relevance of it.

Q Mrs. Davis, you could have traded in a half acre of the land that you already owned in Unit in order to move out to Rio Rancho, is that not right

A What did you say?

THE COURT: You could have traded in a half acre of what you had purchased in Unit 9 for a building lot, could you not?

THE WITNESS: Yes, if I wanted to.

THE COURT: If she wanted to.

Q But you decided to purchase an additional half acre?

A I chose to do it that way.

Q Is that because you wanted to hold on to your 1.9 acres for your children?

A That's right.

Q Do all your children live with you in Rio Rancho?

A Four of them do.

Q Where does the other one live?

A In New York.

Q Do you have any expectation of your fifth child coming out to live at Rio Rancho?

A Yes.

Q Will that be in the ranchette?

A She is old enough that if she wants to go on her own she may, which she is now doing.

THE COURT: I gather she is twenty-five years old.

THE WITNESS: No, the twenty-five year old is with me.

Q Do you have any plans for using any of the 1.9 acres to build an additional home for any of your children?

A The 1.9 acre, as I said before, we reduced to half an acre and I am using it towards the ranchette.

Q Once all that land was traded into the ranchette, am I correct in saying that you will not have any further land holdings in Rio Rancho?

A That will be in Rio Rancho. The ranchette is in Rio Rancho.

Q But other than the land that comprises the ranchette, you will thereafter have no further land holdings in Rio Rancho, is that right?

A Not at present.

Q Do you intend to buy more land?

A Yes, I hope to get my sister's half acre.

Q Your sister has a half acre?

A Yes.

Q Where is her half acre?

THE COURT: Now come on.

A In Rio Rancho.

THE COURT: You don't have to answer that question.

Q When you went out there you say you were shown Unit 11 as a possible exchange area, is that right?

A Yes.

Q You decided against Unit 11 and one of the reasons you said was because it didn't have paved roads whereas Corrales Heights did.

A Along with other things,yes.

Q Did you expect paved roads in the area where you lived in Rio Rancho?

A If I expected what?

Q Did you expect paved roads to exist in the area where you lived at Rio Rancho?

A It is existing in the area where I now live.

Q It did not exist in Unit 11, is that right?

A No. It now does.

Q When you were having the financial difficulties in keeping up the payments on the 1.9 acres, did you try to sell any of that land?

A Of course not.

Q You say of course not. Why not?

A Well, I just didn't want to sell any.

Q But you found yourself forced to go into Rio Rancho and ask them to cut you back, right, from 1.9 acres to one acre and then from one acre down to a half acre?

A Yes, which they readily did.

Q What I am asking you is before you did that, did you try to sell any of that land?

A Absolutely not.

Q Why not?

A I answered that before, sir.

Q Your answer was that you wanted to keep it but eventually you found yourself forced to give some of it up and what I am asking you is why did you not make any attempts to resell the land before you asked Rio Rancho to cut you back from what you originally owned?

A My answer was that I did not want to sell any.

Q Were you aware that there was no resale market in Albuquerque for undeveloped land at Rio Rancho Estates?

A I wouldn't say that.

Q Excuse me?

A I would not say that.

Q There is a resale market, is that what you are saying?

THE COURT: No, she just wouldn't say that what you are saying is true. The question is whether she was aware.

Q Do you know whether or not there is a resale market for undeveloped land in Albuquerque?

A I said--

Q I am sorry, I didn't hear your answer.

A I beg your pardon?

Q I didn't hear your answer.

A I have seen it done. I have seen people buy land there.

Q Do you know what people have bought the land?

A Yes.

Q What people?

A Other builders have bought land there, several.

Q Builders have purchased land and then traded it in and put up houses in the building area, is that right?

A Yes.

Q Do you know how often that has occurred?

A Almost every week.

Q Every week?

A Yes. Almost every week.

Q Is one of those builders Sunland Realty?

A Yes.

Q Are you aware that Sunland Realty paid $500 a lot for the lot that they purchased?

MR. ARKIN: Objection.

THE COURT: Sustained.

A I don't know how much they --

THE COURT: Wait.

Sustained.

Q How many friends of yours who you introduced to Rio Rancho Estates purchased land at Rio Rancho?

A Almost every one.

Q About how many?

A About -- over twenty.

Q And have any of them resold the land that they own out at Rio Rancho?

A I don't know.

Q By the way, there did come a time when Rio Rancho Estates did forfeit your account, isn't that true?

A No, they never did.

Q Never did?

A No. I have all the -- I have all the land that I bought until I gave it up of my free will.

Q Mrs. Davis, do you recall in I think approximately March of this year your account being cancelled and then being reinstated a week or so later?

A Yes.

Q Excuse me?

A Yes.

Attempts to cancel.

Q Excuse me?

A Attempt to cancel.

Q Attempt to cancel?

A Yes.

Q It was not cancelled and then reinstated?

A Well, if you call it that, but I still owned the property that they were -- that they wrote me about.

MR. KAUFMAN: Just one moment, your Honor.

(Pause)

Q You testified that the ranchette that you are going to build is $60,000, the house and the land, is that right?

A Yes.

Q How much is the land itself?

A I don't know.

Q You don't know?

A No.

Q You only know the combination of the price of land and house?

A That's right.

Q The contract that you have with Rio Rancho to perform your post-construction services at the property, is that a yearly contract?

A Yes. Six months.

Q Six month contract?

A Yes.

Q And does it have to be renewed every six months?

A Well, not every six months -- well, a contract, if it is a six month contract, naturally, it has to be renewed after six months.

Q Is there an option clause exercisable by either side?

A I beg your pardon?

Q Is there an option clause that either side can exercise for an additional six months?

A I imagine so. It will go up for bid again and I just bid on it again.

Q And how much income do you derive from your contract at Rio Rancho Estates?

A It varies, sir.

Q Well, what was it the last six months?

A $3,000 a month.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: Redirect.

MR. ARISOHN: No redirect, your Honor.

THE COURT: You may step down.

(Witness excused)

THE COURT: I gather that concludes the hearing for the day?

MR. FLEMING: I am sorry, your Honor, we are not in a position to present another witness at this time.

THE COURT: All right.

The jury is excused until 10:00 o'clock tomorrow morning.

(Adjournment taken to January 6, 1977, at 10:00 o'clock a.m.)

A 6718

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Reverend John B. Rupley	6428	6452		
Joyce Davis	6505	6536		

EXHIBIT INDEX

Government	Identification	In Evidence
179		6504
179-A		6504
2007	6550	6550

Defendants Howard Friedman and Henry Friedman	Identification	In Evidence
JU	6515	6515
JV	6516	6520
JW	6516	
JX	6516	
JY	6516	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 6, 1977
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning. You have an application?

MS. THOMPSON: Yes, your Honor, I do.

Subpoenas, as your Honor may know, have been served on various proposed defense witnesses, including a number of experts, and the one I am particularly interested in at the moment, but I will address two others as well, was served on Jose Luis Yguado and what I am concerned about is that it is our intention to call Mr. Yguado tomorrow and the subpoena that was served on him as was served on a number of other proposed defense witnesses calls for production of documents four business days before the witness is to give his testimony and states that the subpoena may be complied with by giving the materials to the United States Postal Inspector.

Conceivably Mr. Yguado could have given

them to a United States Postal Inspector in Albuquerque. What I am particularly concerned about is that the subpoena is overly broad to say the least. It calls, for example, in Paragraph 3 for all documents of whatever nature that he ever did relating to the Albuquerque area. Of course Mr, Yquado is located in the Albuquerque area and he has been practicing professional planning since approximately 1962 in the Albuquerque area and we are talking about virtually every piece of paper that he has in his office.

In addition, Paragraph 1 calls for documents of whatever nature that were done for any of the defendants or any agent of any of the defendants. Work that Mr. Yquado has done for the defendants has been tendered to the government during the course of discovery and when we gave them our proposed exhibits. Mr. Yquado has done certain specific work for my law firm and Mr. Arkin's law firm in connection with the defense of this action.

His testimony will not relate to that work as such and we would say that it would be obviously a violation of the work product privilege and the attorney-client privilege to produce that material.

Also, as your Honor already knows, a list of the materials on which Mr. Yquado will rely when he testifies has already been tendered to the government and we don't see the need for producing any other material in response to the subpoena given as I say the government already has the key documents that Mr. Yguado has produced for the defendants.

I should also mention that when we discussed subpoenas before, the government's response has been, well, the defense had access to all of Mr. Avellanet's material and Mr. Carruthers' material and so that the record is clear, I should state that the only material that we had access to with regard to Mr. Avellanet were the premarked government exhibits and the 3500 material.

Where Mr. Carruthers was concerned it is true that the defendant served a subpoena on him and his reaction was not atypical of that of someone who calls for a host of material and it was ultimately worked out and we obtained from Mr. Carruthers only official publications of the City Department of Planning for Albuquerque, which would have been entitled to if we had walked in off the street without a subpoena. The same is true of Mr. Pierce. The only things we obtained from him were public documents.

With regard to a second subpoena --

THE COURT: Wait, let's do one at a time.

I have enough observing this presentation of yours.

MS. THOMPSON: Does your Honor want to see a copy of the subpoena?

THE COURT: Please.

MS. THOMPSON: Your Honor, this is a copy of the subpoena that was served on George Marcou --

THE COURT: I want the one that was served.

MS. THOMPSON: I do not have it, but the rider is identical.

THE COURT: All right.

Mr. Kaufman.

MR. KAUFMAN: Yes, your HOnor, the rider that we served on the defendants' experts is based in large part on the subpoenas that the defendants served on our experts.

What happened when the defendants served George Carruthers, we entered into an agreement, as your Honor may recall, with the defendants that rather than have Mr. Carruthers bring to New York the myriad of documents that the defendants subpoena called for, we allowed the defendants to go to Mr. Carruthers' office, he made his office available to them and they at their leisure were able to go through all the documents there and pick and choose among the documents they wanted. That was the compromise we entered into with respect to the subpoena that the defendants served on Mr. Carruthers.

Now we are in a similar situation with Mr. Yquado with the exception that the defendants are saying that Mr. Yquado is going to testify tomorrow. We are relying on them to say that the only relevant documents are the documents that have been listed on their one-page sheet with respect to Mr. Yquado.

THE COURT: Stop at that point.

Do you make that representation, Ms. Thompson?

MS. THOMPSON: I would say that the one-page sheet and possibly some United States Geological Survey maps.

THE COURT: That is all?

MS. THOMPSON: That is the only thing I can think of.

MR. KAUFMAN: Your Honor, I think it would be relevant if Mr. Yquado is going to testify with respect tothe growth of Albuquerque and how it can only grow in a northwest direction if Mr. Yquado did considerable work in Albuquerque in the northeast section. If we could have the plans and documents that he worked on with respect to master planning in the northeast section, I think that is relevant to this case.

THE COURT: You have asked for everything he's got. He might as well turn his office over to you in Rider No. 1. I won't put that burden on a witness.

MR. KAUFMAN: Your Honor, I think we ought to then be able to arrange a similar type of accommodation that we arranged with respect to the defendants' subpoena of Mr. Carruthers.

We have been instructed not to talk to Mr. Yguado and indeed not to talk to any of their experts. Given that restriction --

THE COURT: You were not instructed to talk to any experts. You were told that the experts didn't want to talk to you.

MR. KAUFMAN: Mr. Arkin specifically told us not to call the experts.

THE COURT: Yesterday in this courtroom we talked about an expert and it turned out the expert said he did not want to talk to you. That is all I am aware of.

MR. KAUFMAN: I think Mr. Arkin will confirm that fact that he instructed the government not to call their experts because it was his position that that would be a violation of the Sixth Amendment if we even tried to contact the experts.

So given that restriction, it would be impossible for us even to enter into the type of accommodation that was entered into with respect to the defense subpoena of Mr. Carruthers.

If we could contact Mr. Yguado, talk to him for a while, find out what other reports he may have worked on, we may be able to ask him to bring specific things with him to New York, but we are obviously foreclosed from even doing that.

MS. THOMPSON: I should correct the record in two respects.

One is that the prosecution had no expert witnesses. All the witnesses whom they produced were fact witnesses.

In addition, where Mr. Pierce and Mr. Carruthers are concerned they were both government employees and at least when I spoke with them they made it very clear that they were talking to me because they felt they had an obligation as government employees to talk to anyone who walked in the door. I think that puts them in a very different position from the people we are talking about here.

ojw

THE COURT: He will have to produce something, the question is what. I think that you ought to talk during the morning recess with Mr. Kaufman and see if you cannot work this out. Obviously, Mr. Kaufman, I would strike number one on its face. I haven't read the rest of it.

MR. KAUFMAN: One other matter, your Honor.

The defendants have said that they asked Mr. Yguado to do certain work for them which may have been the subject of certain written communications but that he will not be testifying about that.

THE COURT: They said it is his work product for the attorneys.

MR. KAUFMAN: If the defendants instruct Mr. Yguado or any other witness to do certain work in connection with the issues on this case, the government submits that it is a proper area of cross examination --

THE COURT: Not work product for the attorney in preparing his case.

MR. KAUFMAN: If the witness is told, do a survey of Albuquerque and come up with a conclusion that Albuquerque can only grow to the northwest, I think that is a proper area of cross examination.

THE COURT: If the defendants' attorney,

Ms. Thompson specifically, tells an expert, I want you to prepare a survey for me which will prove the proposition that Albuquerque can only grow to the northwest, that is a perversion, isn't it?

Are you accusing her of doing something?

MR. KAUFMAN: Not at all, your Honor.

THE COURT: Then what is your point?

MR. KAUFMAN: I am saying that the government is entitled to find out what instructions were given to an expert in connection with his testimony here.

THE COURT: No, you are not. You are entitled to his testimony and what he says but not the instructions that were given to him. You are entitled to hear what he says on the stand and cross examine him on what he says on the stand and any documents that he may have used in reaching that expert opinion, but you are not entitled to what the lawyer said to him.

What is your next point?

MR. KAUFMAN: I am waiting for the next --

THE COURT: I am looking at you. As far as I am concerned I am finished.

MR. KAUFMAN: I have nothing else to say, your Honor. Your Honor has ruled.

MS. THOMPSON: Very briefly, your Honor, there was also a subpoena served on Max Flatow and Mr. Flatow informed me on Monday night --

MR. ARKIN: That has all been taken care of, Ms. Thompson.

THE COURT: Yes, Mr. Fleming.

MR. FLEMING: Your Honor, we spoke to Mr. Graham. I think in the course of my understanding we advised him we believed he could come in and get out in the same day.

THE COURT: He can come in and get out in five minutes anytime he shows up.

MR. FLEMING: Very good.

THE COURT: Bring the jury back.

MR. ARKIN: May I right now, I wish to give to your Honor a schedule of the idiosyncratic or unrepresentative statements which appear in the record with respect to salesmen's representations. I have one for Ms. Hynes and the original for your Honor.

THE COURT: I gather you want me to review this after giving Ms. Hynes an opportunity to answer and determine whether these answers should be stricken from the record.

MR. ARKIN: Whether the questions and

answers should be stricken, yes, your Honor.

Based upon Mr. Fleming's presentation on the law, which was made about three days ago, he cited all the applicable cases.

MS. HYNES: Your Honor, if I can just have overnight.

THE COURT: Sure.

MR. FLEMING: Judge, I will not be here tomorrow. My clients know that. I have to take a boy off to school and I will probably be leaving today after the first witness and my clients also know that.

THE COURT: I see Mr. Sprizzo, your young assistant is sitting there.

Bring the jury in.

MR. LAVINSKY: Your Honor, I will be leaving with Mr. Fleming this morning.

THE COURT: Your attractive young assistant will be here.

MR. ARKIN: I will stay.

MR. LAVINSKY: Ms. Thompson and I will be joining Mr. Fleming this morning, but I will be back this afternoon, your Honor.

(Jury present)

THE COURT: Next witndss.

MR. SPRIZZO: Reverend Scott Byers.

REVEREND E. SCOTT BYERS,

called as a witness by the defense, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. SPRIZZO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SPRIZZO:

Q Reverend Byers, where do you live?

A Rio Rancho.

Q What address at Rio Rancho?

A 1353-D Golden West.

Q Is that a condominium?

A A condominium, yes.

Q How long have you lived at that address?

A Since January of 1973.

Q Are you presently occupied?

A I have retired. Only partially occupied.

Q What was your occupation?

A Minister.

Q What denomination?

A Presbyterian.

Q How long were you a minister in the

Presbyterian Church?

A Within a few months short of forty years.

Q What is your educational background?

A College, AB degree and then Princeton Seminary, Bachelor of Theology.

Q Are you married?

A Yes.

Q Do you have any children?

A Three daughters.

Q When did you first hear of Rio Rancho?

A In August of 1968.

Q Under what circumstances?

A We received a letter inviting us to a dinner at a restaurant on the East Side of Syracuse.

Q Had you received similar invitations previous to that time?

A No.

Q What did you do as a result of receiving that invitation?

A Decided to go to the dinner.

Q At the time you went to the dinner, did you have in your mind any intention to buy any land?

A None whatsoever.

Q What was your purpose in going to the dinner?

A My wife thought we would go and have a good dinner and come home.

Q You went to this dinner, do you recall where it was held?

A I don't recall the name of the restaurant. It was a restaurant on the east side of Syracuse.

Q Would you describe as best you can recall what happened at the dinner?

A We went in. There was a young lady who we found later was our own agent, the land agent who was with us at our table, but at the time we went in she greeted us, took our names and she was busy with greeting other people at the entry to the dining room.

In due time we went in and the table at which we were to sit was indicated. We were seated there with, as I recall, four or possibly up to six other-- it was a large circular table. We were seated with four or six other couples and our young lady who was the agent and had dinner. Dinner was eventually served to all of the tables.

Q Was there a presentation?

A After the dinner, yes.

Q Do you recall anything about what was said at that presentation?

A The chairman, I suppose he might be called, told us something about Rio Rancho. Gave us a general idea of its development and then showed colored motion pictures.

Q Do you recall anything about the picture?

A They were good pictures, interesting pictures. We had a very adequate, we felt, not knowing anything about Rio Rancho at the time, we felt later in light of our experience of living there that they had been very satisfactory and comprehensive pictures.

Q You found them to be accurate?

A Yes, entirely.

Q . Did those pictures show the undeveloped land?

A Yes, panoramic views.

Q Was the room well lighted?

A Except for the time the motion picture was being shown, perfectly adequately.

Q Did you have any difficulty reading any of the material that was given to you?

A None whatsoever.

Q Now, did there come a time when you had a conversation at that dinner with a salesman?

A Yes, after the pictures were shown.

Q Do you recall the salesman's name?

A No, I don't at the moment.

Q Now, did you feel that when you were at that dinner that you were under any pressure to buy?

A No.

Q Would you describe the atmosphere at the dinner as being one of high pressure salesmanship?

MS. HYNES: I object to the leading, your Honor.

THE COURT: Overruled.

A We didn't feel so, no.

Q Did you feel you were under any more pressure than if you went in to buy a car?

MS. HYNES: Objection to the leading, your Honor.

THE COURT: Overruled.

A No, I went in to talk a car a week before and the fellow gave me a hard time so I walked out. This was far less pressure.

Q Did you decide to purchase any land that evening?

A Yes, we did.

Q How much land did you purchase?

A An acre.

Q Now, what was your understanding as to what you were buying?

A In what terms, I am sorry?

Q Did you understand that the land you were buying was undeveloped land?

A Oh, yes, entirely.

Q And that it had no utilities on it of any kind?

A Right.

Q Did you have any understanding as to what your rights were with respect to exchanging that property in for other property?

A Yes, that was indicated to us. We had an understanding of that.

Q What was your understanding?

A That we could be relieved of the whole obligation, the whole deal and receive our money back in full within six months or we could make an exchange within five years, as I recall.

Q Into what?

A Into a piece of property in an area that was being developed and where homes were being built.

Q Why did you buy that acre of land, Reverend?

A Why?

Q Yes.

A We felt that -- at the time we felt that that would be the area in which we would build. We felt it was a good investment.

Q What do you think about land as an investment generally?

MS. HYNES: Objection.

A I believe in it soundly.

Q Was anything said at that dinner, by the way, with respect to the growth of Albuquerque that you can recall?

A It was indicated to us that Albuquerque was growing and that because of physical or political circumstances, that is the development of business areas and the like, because of physical situations, the mountain to the east, various other factors, that the only large area for subsequent and continued growth was to the northwest.

Q When you went out to Albuquerque -- did you at some time go out to Albuquerque?

A Yes, we went out in August of 1970.

Q When you went out to Albuquerque and the time that you have lived there from your own experience, have you found that to be an accurate statement?

A Quite so.

Q I believe you testified you went out to Albuquerque in August of 1970 and that was outside the six month perid, was it not?

A That was outside, that was beyond it, yes.

Q It was beyond the period in which you could rescind your sale?

A Right.

Q Was there any reason why you didn't go out within the six month period?

A We thought of it. I came across an officer of the bank where we did our banking in Syracuse who had bought land and we were still wondering whether we had made a wise investment.

I came across this man and through my teller, telling her about the land that we had bought, and she said, well, I think we have an officer here --

MS. HYNES: Objection. I object to the conversation.

THE COURT: I am not interested in your conversation with the officer.

A She said --

THE COURT: Wait, you can't tell us that.

A I beg your pardon.

Q Did you speak to people you knew in the business world including bankers about your investment?

A Yes.

Q As a result of those conversations you made a decision that it was not necessary to go out and look at your land?

A Right.

Q Did you speak to an attorney?

A Yes, I did.

Q How soon after your purchase did you speak to an attorney?

A Within a matter of a few weeks.

Q Did you receive at the dinner a package of literature?

A We did.

Q Do you recall whether or not among the literature you received was a property report?

MS. HYNES: Can he fix a time, your Honor, is tis before or after the purchase?

THE COURT: He said August of '68.

A I beg your pardon?

Q Do you recall whether you received a property report?

A Yes, we did.

Q Did you show all the literature that you received to your attorney?

A The whole packet, yet, the entire amount.

Q As a result of your conversation with your attorney, did you make any decision to cancel your purchase?

A No, he felt it was sound.

Q Now, you testified you went to Rio Rancho in August of 1970.

A Yes.

Q How did you go to Rio Rancho, did you go on the tour?

A We put our car on a train in Canada and went across Canada by train and reclaimed the car at the western side of Canada and then visited our two daughters in California for about a week each and then drove back across to Rio Rancho.

Q What did you do when you got to Rio Rancho?

A Well, we drove right up to Panorama Inn as it was then called. It is now Rio Rancho Inn.

Q Then what did you do?

A We went to the land office and introduced ourselves. Told them who we were and that we owned property there and they assigned a young man to us to take us out and show us our property.

Q Did you look at your property?

A Yes.

Q By the way, where was your property located, do you recall what unit it was in?

A We have since exchanged within the unit. I don't recall. At that time I believe it was 16. It is now in 10.

Q When you saw your land, did you see what you expected to see?

A Yes.

Q You didn't feel you had been misled in any way about the quality of the land you purchased?

A No.

Q Did you decide at that moment that you were going to buy a house or condominium in Rio Rancho?

A That we would buy a house or condominium? No, we did not at that time.

Q When you drove to Rio Rancho, what route did you take?

A We came -- when we came in from the west, we came in on 40 and then drove up Coors Road to Rio Rancho.

Q I take it you saw a lot of vacant land on either side of Coors Road?

A A lot.

Q How long did you stay at Rio Rancho in New Mexico at that particular time, how many days?

A On that visit, I believe it was -- I think we were there four days. Not more than four, three or four days.

Q Did there come a time when you went to Rio Rancho again?

A Yes, we went out in August of '72.

Q Will you describe those circumstances for the jury?

A Well, at that time we were definitely considering, I knew retirement was approaching and we had to make a definite decision and when we left Syracuse Mrs. Byers had looked over the literature again more carefully and in detail and found in perhaps a piece of literature that had arrived by mail later, because I don't recall that we had seen it in the first literature, that condominiums had been built and when we left Syracuse she said, let's think about the possibility of trading some or whatever portion of our land they will take toward a condominium because we felt then that we were not -- circumstances were not such that we could be there to watch the building of a house and so we decided that we would no longer consider building.

Q Then what did you do?

A We-l, when we got there, we were assigned to an agent and told him that we would like to, if we could we would like to exchange whatever portion of the land AMREP would accept toward a condominium, which was worked out to our satisfaction.

Q Do you recall how much you had paid for your one acre initially?

A May I refer to notes?

Q Sure.

A Our original price for 1.10 acres was $3,495.

Q How much of that acreage did you exchange?

A One half.

Q What was the cost of the condominium lot that you purchased?

A $24,875.

Q The condominium, not the lot?

A $24,875.

Q D id you make a profit on the exchange in terms of theland?

A We felt that we were dealt with fairly. We had owned the land a relatively short time and made a profit of $825 on the half acre.

Q What happened to that $825?

A Beg your pardon?

Q What happened to that $825 that you say you made on the land?

A It was credited on our condominium purchase.

Q When did you actually move into your condominiu

A We went out in December of '72 and were there a day and a half or two days while our furniture was put into our condominium and then flew to California to spend Christmas with our daughters and their families and came back January 3rd, I believe it was, and moved in permanently.

Q Have you been satisfied with your condominium?

A Completely. We have got the best condominium in the whole area.

Q You find it a comfortable place to live?

A Very.

Q In your dealings with Rio Rancho, did you find that they treated you fairly?

A We feel so.

Q Do you recall your purchase of land at Rio Rancho was a good investment?

A Yes.

Q What do you intend to do with your other half acre?

A We have been too busy and too happy to do anything about it. It is still sitting there.

Q Reverend Byers, you have lived at Rio Rancho for about I guess a little over two years?

A Since January of '73, yes.

Q That is three years ago.

Would you describe what your life is like at Rio Rancho?

MS. HYNES: Objection.

THE COURT: Sustained.

Q By the way, Reverend Byers, are you still active in the church?

MS. HYNES: Objection, your Honor.

THE COURT: Sustained.

A Quite so --

THE COURT: Wait. When I sustain an objection, you can't answer the question.

Q Have you noticed any growth in your particular parish?

A I am not pastor of a parish, not an active pastor of a parish now.

Q You do preach on occasion, is that correct?

A Quite often, yes.

Q Have you noticed on the occasions when you do go to church services that there has been an increase in church membership?

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q Reverend Byers, as a result of your dealings with Rio Rancho, do you feel that in any way you were defrauded or cheated?

A None whatsoever.

MR. SPRIZZO: One moment, your Honor.

(Pause)

MR. SPRIZZO: I have nothing further.

THE COURT: You may cross examine.

MS. HYNES: Thank you, your Honor.

CROSS EXAMINATION

XXX BY MS. HYNES:

Q Reverend Byers, my name is Patricia Hynes and I represent the government.

A Thank you.

Q When you went to the sales dinner with your wife in Syracuse, you said that you recalled seeing a film. Do you recall what the name of the film was that you saw?

A The title of the film?

Q Yes.

A No, I don't. Not the precise title.

Q Do you recallthe title "Your Golden Future"?

A I can't say that I do, no.

Q Do you recall whether you saw a film entitled "West Side Story"?

A No.

Q You said that you bought 1.10 acres that night, is that correct?

A 1.10, yes.

Q You bought with a view to retiring?

A Yes.

Q You said that you were aware that you had this exchange privilege?

A Right.

Q You testified that the exchange privilege was a privilege for five years?

A Yes.

Q Can you explain what that five year exchange privilege was?

A Well, within that time we could exchange the lot we purchased for a lot in another area that was being developed.

Q So you believed that the five year exchange privilege was an exchange within five years into a building area, is that correct?

A Yes.

Q You expected that you would retire within five years and move to Rio Rancho?

A Yes.

Q Therefore, you would come within that five year exchange privilege?

A Yes.

Q You said that there was a chairman of the sales meeting, is that correct, the person that was speaking in the front of the room?

A Yes, I would call him a chairman, yes, presiding.

Q Presiding person.

Did he use any charts that you recall in giving his presentation?

A Diagramatic charts, you mean?

Q Yes.

A On a blackboard or the like?

Q Yes.

A I do not distinctly recall that he did, no.

Q Do you recall whether he used any charts that made a comparison between an investment in land

and stocks and bonds and money in the bank, does that refresh your recollection?

A I can't say that I distinctly recall it. It may be that such were used, but I don't recall it distinctly.

Q Do you recall whether apart from whether a chart was used that there was a discussion by this speaker about various types of investment including money in the bank and stocks and bonds?

A I think possibly so.

Q You said that you believed that land was a good investment?

A Yes.

Q Did the speaker tell the audience that land gave the highest return on investments?

A No, I don't recal lsuch a statement.

Q Do you recall whether there were any percentages given on the various types of returns of investment by the speaker?

A I don't recall them.

Q Do you recall that the speaker talked about the growth of Albuquerque?

A Yes.

Q What do you recall that the speaker said about the growth of Albuquerque and the direction of growth of Albuquerque?

A Essentially, in the first place, that Albuquerque was growing and had been growing since the end of the [illegible] the only large areas of land there [illegible]

[illegible]

[illegible] the side?

A Yes, he indicated that there were parcels there, [illegible] to the extent that there were on the other side.

Q To your best recollection can you tell the Judge and jury what your best recollection is of what that speaker said about land on the northeast side of Albuquerque?

A On the northeast side?

Q Yes.

A Not in detail. I recall that he indicated that either because of Indian reservation land, land grants or government owned land that land was -- very little land was available on the east side of Albuquerque.

Q Do you recall the phrase being used at that dinner that Albuquerque was bursting at the seams and could only grow to and through Rio Rancho?

A I can't say that I recall that precise phrase, no.

Q In substance, was that basically --

A It was indicated that the largest area for future growth was to the northwest, west and northwest.

Q You said that you went to see your lawyer after you purchased at the dinner that night; is that correct?

A Yes.

Q Did you tell your lawyer that you bought this land with a view to retiring there?

A Yes.

Q Within about five years?

A Yes, he knew that, yes.

Q At the dinner that you attended, do you recall at the end of the sales presentation the sales people in the room called holds on various pieces of property?

A They -- the young lady who was our agent called hold after we had made a commitment.

Q So your sales person called a hold.

Did any other sales person call a hold on property?

A Yes, from varous tables.

Q Now, you testified that you were permitted to use one half acre to trade in toward your condominium?

A Yes.

Q That you purchased. Were you allowed the appreciation on the price of your half acre in Unit 10 which you bought?

A We were.

Q That appreciation in price was $800?

A $825 I believe, yes.

Q So when you purchased it -- between the time you purchased the property in 1968 and the time that you were ready to exchange and build at Rio Rancho the price for that piece of property had now increased $800?

A Yes.

Q And you were allowed that increased price for the purchase of your condominium?

A That is correct.

Q Were you permitted to exchange the entire acre that you bought toward the condominium?

A No. We were told that they were accept half of our acre.

Q Did you ask to have the entire acre given toward the purchase of the condominium?

A We asked how much would be accepted, yes, if an acre had been accepted, we would have been happy to have exchanged it.

Q But an acre wasn't accepted, but a half acre was?

A A half acre was.

Q Do you still have that other half acre?

A Yes.

Q Have you made any efforts to try to resell that half acre?

A No, we haven't.

MS. HYNES: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. SPRIZZO:

Q You were asked on cross examination about land in the northeast. Since you have been out in Albuquerque have you been to the northeast?

A Yes.

Q Would you want to live there?

A No.

Q Why not?

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q You were asked about your right of exchange. I would like to show you your contract, which I will have marked for identification.

(Defendant Chester Carity and Daniel Friedman Exhibit JZ marked for identification)

xxx

Q I direct your attention to Paragraph 3 of the contract, the last sentence of that paragraph.

Would you read that to yourself?

A One half acre, Lot 21 --

Q No, Paragraph 3, the last sentence. Just read it to yourself.

A Oh.

Q Beginning, "When the buyer is ready to build."

A Yes.

Q Does that refresh your recollection as to whether there was any time period on your right to exchange into the developed area?

A May I reread that. I am sorry, I didn't understand your question.

Q You testified I think on cross examination that you were limited to a period of five years to exchange your lot into a building area.

My question is, does reading that last

sentence of Paragraph 3 of your contract refresh your recollection as to whether there was any time limit?

A There was no limit on that, I am sorry.

Q If you thought there was a five year limit, you got more than you thought you got?

A We did, yes.

MR. SPRIZZO: I have no further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

MR. SPRIZZO: Mrs. Quinn.

MARION QUINN, called as a witness by the defense, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. SPRIZZO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SPRIZZO:

Q Mrs. Quinn, will you try to keep your voice up so everyone can hear you. It is a rather large courtroom.

A Yes.

Q Where do you reside?

A I reside at 3611 Oakmont Drive, Rio Rancho.

Q How long have you lived there?

A Two and a half years.

Q Are you married?

A Yes, I am.

Q Do you have any children?

A Yes, I have five.

Q Approximately how old are your children?

A 27, 24, 22, 16 and 13.

Q Is your husband employed?

A No, he is retired right now.

Q Before his retirement, what was his occupation?

A He was a trailer driver for Allied Chemical in New Jersey.

Q When did you first hear of Rio Rancho?

A I think it was 1972 around Christmastime. We received an invitation to go to a dinner.

Q Are yousure it was 1972 or was it 1971?

A I am not too sure on the date.

Q What happened with respect to Rio Rancho?

A We went to the dinner and we were shown a film and told about the Albuquerque area and listened to some of their statistics.

We had a very nice dinner, but we didn't buy any property at that particular time.

Q Was there a presentation?

A Was there what?

Q Was there a presentation at the podium?

A Yes, there was.

Q And a film?

A Yes, there was.

Q By the way, Mrs. Quinn, how many dinners in all did you attend at Rio Rancho?

A I would say between ten and twelve in all the time.

MS. HYNES: May we fix a time?

MR. SPRIZZO: If I can have the contract, I can fix a time precisely.

May I have this marked for identification.

(Defendant Chester Carity and Daniel Friedman Exhibit KA marked for identification)

Q Mrs. Quinn, I show you what has been marked KA for identification.

A I didn't take my glasses.

Q Can you read the date at the top of your purchase contract?

A July 7, 1972.

Q Does that refresh your recollection as to the year of the dinner, the first dinner that you went to?

A No, not really because we went to Christmas, just before Christmas and then the next July we took a trip out with the five children in the Winebago.

Q Is that when you made your first purchase of Rio Rancho land?

A Yes.

Q If that purchase contract is dated July 7, 1972 --

A Then it was in 1971, yes.

Q That first dinner that you went to, do you remember any particular incident that remains in your memory?

A Yes. At the time we were seated at a table with a salesman at the table and at the time there was a man who questioned whether if he bought land at that particular time --

MS. HYNES: Objection to the conversation.

THE COURT: Not a conversation with some other purchaser at the dinner. Objection sustained.

MR. SPRIZZO: They introduced this type of testimony.

THE WITNESS: The salesman was sitting at the table.

THE COURT: Objection overruled.

A A man at our table questioned the salesman if he bought land would he be able to make, resell it and make a percentage within a year or two or three and he said -- the salesman said, no, I cannot promise that. We weren't ready to buy then anyway.

Q What happened with the man who made that request?

A He got up and walked out.

Q He said he was not interested?

A He was not interested because he couldn't make a fast profit on the land.

MS. HYNES: Your Honor, I am going to object to Mr. Sprizzo leading and ask that he not lead the witness.

MR. SPRIZZO: I think I am entitled to lead to refresh the witness' recollection.

THE COURT: When it is exhausted but I am not quite sure it is exhausted yet.

MR. SPRIZZO: I thought it was.

A I am very nervous. I have never done this before and I am a little nervous.

THE COURT: This happens to thousands of people who appear before me. Relax and sit back and just answer the questions asked by counsel.

Q Would you describe the atmosphere of the dinner, was it high pressure?

MS. HYNES: Your Honor, again, can we just have the witness' testimony.

THE COURT: I think he is entitled to ask that.

MR. SPRIZZO: I don't want to get the entire thing covered by other witnesses. I just want one phase.

A We didn't think we were high pressured at all. As a matter of fact, we enjoyed it very much and we went home and read the brochures and forgot about it for a while.

Q Was there any reason in particular why you did not buy land on that occasion?

A As I say, my husband is part German, he is like from Missouri, he likes to see before he buys anything, so we decided, we were thinking of making some kind of a change and he was thinking of retiring so we went with the Winebago the next July and went out with our five children so they could see the different parts of the country and make up their minds and our minds. We all went as a family. We make decisions as a family.

Q At that time was your husband considering retiring?

A He was thinking about it, yes.

Q Where did you go on your trip?

A We left from New Jersey with a 28-foot mobile home, self-contained unit, and we drove throught the United States.

We stopped at New Mexico because when we had been to the dinner we wanted to see what it was all about.

Q You stopped in New Mexico first?

A Yes, we stopped at a KOA, which is Campgrounds of America with this self-contained home having five children it was cheaper for us. We looked the area over.

Q Did you have any contact with Rio Rancho Estates on that occasion?

A While we were there one of the people from Rio Rancho invited us to come out to Rio Rancho to another luncheon and they gave us -- with the children, and we saw typical or the same type of film we had seen before and listened to more about the same thing we had heard at the dinner and we liked what we saw. The children liked it. We liked the recreation that they had, we liked the environment, the area, the swimming pools, the possibilities for children.

They have a new high school and a new grammar school which they are adding to now. The kids liked it. There is horseback riding, tennis, swimming, three different pools, recreation places.

We bought land at that time.

Q Where was that luncheon held?

A At what was then the Panorama Inn.

Q You said they invited you out. Was that you alone?

A No, the whole family was invited out to the luncheon and we all looked this area over.

Q How did you get out to the Inn?

A They drove us in by a small bus.

Q Were there other couples along with you?

A I think there were a couple.

Q What did you do when you left New Mexico?

A Well, we drove around. We bought land --

Q You say you bought land at this luncheon?

A Yes.

Q How much land did you buy?

A We bought an acre and a half. We bought that much because if our children were interested there would be some there for them because my oldest daughter was about to get married.

Q Did you go cut and inspect your property at that time?

A No, we didn't, not with the salesman. We went out on our own and looked the area over.

Q You didn't see your particular piece of property?

A Yes, we looked in the surrounding areas. We knew approximately where it was and what it was all about and we were satisfied with the way they put the contract and all. In case we didn't want to continue with this binder we had six months to get our money back.

So we were happy with that and we drove around the area, we were happy and we left deciding we were going to see Phoenix, Arizona because that was another place for us. We went to Needles, California. We went to Lake Havasu City where we have relatives there. That was too hot.

Then we went up to Los Vegas, Nevada. We were interested in that, too.

Q How much did you pay for your one and a half acres?

A Approximately, well, with interst I guess it came to more than, a little more than 7,000, close to

$8,000.

Q Do you recall in what unit they were in?

A Yes, Unit 25, I think Lot 18 and 19 and I don't know whether the other one was 17 or something like that.

Q Then what did you do after you had made your swing through these various places you testified?

A We came back to Albuquerque and stayed at the KOA and again looked the area over. We didn't bother going -- we didn't bother the Rio Rancho people or AMREP. We were on our own. We went to Santa Fe, we looked everything over for our kids and what possibilities there were, opportunities for us, my husband and I.

Q Did you and Mr. Quinn make any decision at that time as to whether Rio Rancho was the place you would like to retire?

A Yes, we decided that that was the place. Eventually.

Eventually, we didn't know when, but eventually we would like to retire in that area.

Q Was the climate a factor in that decision as far as you were concerned?

A Oh, yes. We are allergy people and I have arthritis and I feel a hundred percent better there and its one of the best moves I have ever made in my life.

Q I take it then you returned to New Jersey?

A Yes, we did.

Q Did you attend any more sales dinners when you returned to New Jersey?

A Yes, we did, a few, we attended a few more and listened to them. We were very happy and very enthusiastic because we had already seen what these people were advocating at their dinners.

Q Were you asked or your husband asked to speak at these dinners?

A He may before, but it was after we bought our home that we spoke more because we were very, very thrilled with the place. We still are.

Q Did you recommend it to any of your friends?

A Oh, that is the place. We have been -- we have gone from the tip of the West Keys of Florida to above Quebec in Canada and as far west as the end of Pennsylvania, Ohio and then we came across country and that is the place to be.

As a matter of fact, one of my doctors back in New Jersey told me that that would be the place.

Q You can't tell us what our doctor told you.

I take it a time came when you decided to buy a house at Rio Rancho?

A Yes.

Q When was that decision made?

A We decided to come back and we took a chartered flight and at that time when we were there the prices were going up ten percent on everything, we decided that was the time to take advantage of putting a deposit down on something we wanted.

Q When did you make this second trip to Rio Rancho?

A In March. I think it was March 13th. The 15th the price of everything went up. Being that we were there the 13th, we were granted -- we didn't get the raise of the ten percent.

Q Where did you decide to buy your house?

A We bought in Panoramic Heights which is one block down from the golf course. A choice piece of property.

Q That cost you a little more money?

A Yes, it did.

Q How much more did it cost you?

A I would say about $3,000 more for the land, which we traded a half acre of land into this and paid more because we wanted a choice piece of property and a better area.

Q Were you aware that you could have exchanged your half acre even up in another area?

A Yes, but this is what we wanted. This is what we liked so we didn't trade it in for the same.

Q You signed a purchase contract on your house?

A Yes, we put a binder on at that particular time.

Q By the way, you say you came down on a tour. How much did that tour cost you?

A The tour cost us for five nights and six days, wined and dined beautifully for the two of us for $400, I think, and $35 and that was the complete expense of the trip for five nights and six days.

We went to all kinds of dinners and shows and we were taken to all the areas, the mountain, the ski resort, Sante Fe, which is beautiful, and we had a wonderful time.

There is no way we could have gotten anything better than that.

Q I take it then you returned to New Jersey?

A Yes.

Q Did there come a time when -- what did you do when you got to Jersey?

A Well, we had made arrangements at that particular time when it was convenient within six weeks, we took three weeks to go back on a fly and buy thing which meant that it would cust us just the flight there and expenses, which was then later put towards the price of our house, deducted from the price of our house.

Q Do you remember how that was done?

A I think we sent them $600 and they sent us tickets and made arrangements for our stay and food and all and the flight back and forth so that we could go back and pick out the whole house and then we were on our own if we wanted to. We could do anything we wanted.

I picked the house out in two days. Ihave a 2490 foot ranch home inside and out, I picked that out at that particular time. Then we rented a car and again toured the area and the surrounding area.

Q You said you sent a check, did you send it to the constiuction company?

A Yes, they sent us the tickets and they applied that money towards the price of our house.

Q This was about three weeks after your trip in March?

A Yes.

Q Did you have occasion -- by the way, did you put your house up for sale in Jersey?

A Yes, and at that particular time the market fell on houses. It was 1973 in April and it took me a year to sell it in New Jersey.

Meanwhile my house was built. I had contracts and plans and everything. I took all those, we kept in correspondence and I have a stack of contracts and sketches and all of that, the construction.

I took it to my own lawyer back here in Jersey and he said there was nothing that I had to worry about.

Then in October 20th we flew back out to sign the house.

Q Was that on a tour?

A Yes, that was on a tour and we again rented a car and went our own way and explored the surrounding area. We went there and signed the house and this was the third house I had built and I had only seen it as a plan and this was the completion. It was in better shape than the houses I had built in Jersey. There was less wrong with it.

Q Were you dissatisfied in any way with the performance of Rio Rancho in the construction of your house?

A No, they did a beautiful job and I hadn't seen it going up at all.

Q Did there come a time when you sold your house in New Jersey?

A Yes, finally sold it.

Q Did you make a profit on it?

A Oh yes, not as much as I expected. I had to come down quite a bit because it was a bad time to sell a large home.

Q Then you moved out to Rio Rancho, is that correct?

A Yes, with four children, three cars and a truck of nine rooms of furniture.

Q That must have been quite a trip.

A Yes, it looked like a caravan.

Q Do you feel that your purchase of land at Rio Rancho was a good investment?

A A very good investment. As a matter of fact, I am building another house.

Q That is my next question.

What is your basis for believing that your investment in land at Rio Rancho was a good investment?

A Well, I think the value of the house I have now has increased 15 to $20,000 in the two and a half years.

Q How do you know that?

A I am in the process of building another home. If my one particular daughter wants it I will rent it to her. If not, I will use it as an investment.

Therefore, I had to get a mortgage for this particular house. It's a smaller house and I had to go to the local bank, Albuquerque Federal, and in order for him to give me a mortgage, he had to have a good idea of what my house was worth that I have now.

He said that I could make between 15,000 and $20,000 profit.

Q Where is this second house being built?

A This is about three miles beyond the golf course.

Q In what unit?

A Unit 11. It has all utilities in ground and sewage also. It's another section.

Q Did you trade in any of your property?

A I traded in another half acre for that. If I had more money, I would trade my other half acre and build another home. That is how good the prospects are.

Q How do things look in Unit 11 now?

A Beautiful.

Q Are there paved roads?

A Yes, they are all paved and in ground utilities.

Q Do your children go to school at the University of New Mexico?

A I have one daughter who went the first year and she liked it very much. She had gone to Felician in New Jersey, for two years she had gone there, and she liked Albuquerque College better.

Q How does the cost of your daughter's education compare to what it was in New Jersey?

MS. HYNES: Objection, your Honor.

THE COURT: Sustained.

Q Are you familiar, by the way, with the tuition requirements at the University of New Mexico?

MS. HYNES: Objection.

THE COURT: Sustained.

MR. SPRIZZO: I can explain the relevancy of this if I can go to the side bar.

Q How are your taxes out there at Rio Rancho in comparison to New Jersey?

A Beautiful.

MS. HYNES: Objection.

THE COURT: Sustained.

MR. SPRIZZO: I have no further questions.

CROSS EXAMINATION

BY MS. HYNES:

Q Mrs. Quinn, my name is Patricia Hynes, I represent the government.

You testified, I believe, that you went to ten or twelve dinners.

A Yes.

Q That is over what period of time?

A Well, from December around Christmastime of '71 until the time, oh, I would say a few months before we moved, it was rather a hectic time before we moved with trying to sell the house and get out.

Q About how many dinners did you attend before your first visit to Rio Rancho?

A I'd say no more than two.

Q At those dinners you became interested in the prospect of perhaps retiring to Rio Rancho or your husband retiring to Rio Rancho?

A He was thinking about it, but he didn't know for sure whether he could or not.

Q He wanted to see the property first?

A Yes.

Q You went to Albuquerque and you then went to Rio Rancho and saw Rio Rancho?

A That is right.

Q I take it that you made the decision that you did in fact want to relocate to Rio Rancho?

A We didn't want to relocate anywhere until we had seen what we were looking for. I would not have gone in to Albuquerque if I had to retire into Albuquerque. It's another New Jersey.

THE COURT: Wait.

Q That is not my question. I take it at the time you finally bought the property, you had made a decision that indeed you wanted to relocate at Rio Rancho.

A We wanted to relocate but we weren't sure where we wanted to relocate. That is why we took the trip out across country.

Q Having made the trip and seeing the property and seeing other sections, you decided that you did want to relocate to Rio Rancho?

A Yes.

Q At that time you bought the property?

A Right.

Q You bought the property when you were visiting Rio Rancho?

A That is right.

Q You attended a luncheon at Rio Rancho?

A Right.

Q At the Panorama Inn?

A Yes.

Q The presentation that you saw at the Panorama Inn was similar to the presentations that you had seen back in New Jersey?

A Yes.

Q A film was shown to you?

A Yes.

Q There was a speaker's presentation?

A Yes.

Q You said that at the time you bought the property you bought one and a half acres?

A Yes.

Q You also had in mind that your one daughter was about to get married and she might want to use the property.

A Right.

Q To build a house on?

A Yes.

Q When you were touring the Albuquerque area and Sante Fe on these several trips that you had taken out there prior to moving there, you were doing that with a view to your relocation there?

A We were interested to see what the surrounding areas had to offer, yes.

Q You talked about taking a couple of trips to Rio Rancho before you actually finalized the purchase on the house?

A Yes, it is quite a long distance, we had to. We only took the first trip which we put a binder on the property. Then the next trip was to sign the house that was finished, which was from March to October.

No, we came in three weeks later to pick the house and the whole business in two or three days.

Then we came in October and signed the house over, which was ours.

Q Finalize the house?

A That is all. Then the next July we relocated.

Q You told us about a ten percent increase. Was that a ten percent increase that was about to take place on the house?

A The house and property.

Q The house and property?

A Right.

Q You got in under the line on that one?

A Right.

Q When you decided to build your home in

Panorama Heights, I take it?

A Yes.

Q That was in what year, 1972, correct?

A No. I can't remember dates.

Q You actually relocated in 1973?

A '74.

Q '74, I am sorry. It was in '73 that you chose the house in Panorama Heights?

A That's right.

Q At that time did you look at Unit 11 as a possible area where you might build your house?

A No, because when --

Q You didn't look at Unit 11.

MR. ARKIN: May the witness finish her answer.

THE COURT: She asked a simple question and the answer is yes or no, Mr. Arkin.

Q You did or did not look at Unit 11 in 1973?

A I didn't bother because they didn't have utilities.

THE COURT: Pardon me. Just answer the question and let's not volunteer and we will be through a lot sooner.

The question is did you look. It is either yes or no.

THE WITNESS: No.

THE COURT: You did not.

Q Did you look in Unit 7?

A I am not familiar with Unit 7.

Q You are not familiar today with Unit 7 either are you?

A No.

Q Did you know in 1973 that Unit 11 did not have paved roads?

A I think I may have and that is why I wasn't interested.

Q Did you know in 1973 that Unit 11 had septic tanks?

A Yes.

Q You said that today you are using another half acre and building a second home.

A Right.

Q The second home that you are building is in Unit 11?

A Yes.

Q Today does Unit 11 have paved roads?

A It has paved roads.

Q Have those paved roads been put in in the last six or eight months?

A Yes.

Q Does Unit 11 still have septic tanks?

A Not this particular area that I am going into. The old section, yes.

Q In Unit 11 there is a section with septic tanks?

A Right.

Q What is the area you are going into?

A That is the newer section that has underground utilities plus paved roads.

Q When was that section opened up?

A The early fall, I think. Around August or September, I am not sure.

Q August or September of 1975?

A Six.

Q Six, I am sorry, that's correct, 1976.

A Right.

Q This is a house that you intend to either rent to your daughter?

A Or rent.

Q Or rent period?

A Right.

Q In fact, you would be willing to build even a third house and use another half acre to exchange?

A Right.

Q You said that after choosing your house and getting all of your plans together you took the house plans to a lawyer and he reviewed them?

A Right.

Q Is that correct?

A Right.

Q At the dinners that you attended in New Jersey and the dinner that you attended at the Panorama Inn at Rio Rancho, were you shown a film called "Your Golden Future"?

A It may have been that, yes. I don't remember exactly the name.

Q Were you shown a film West Side Story?

A I think that sounds familiar, yes.

Q When you were attending the dinner in New Jerse was there a speaker who gave a presentation from the front of the room?

A Yes.

Q Do you recall whether the speaker used a chart or diagram of any kind?

A I think he did. He may have, yes.

Q Did that chart or diagram compare an investment in land with an investment in the stock market or money in the bank?

A I don't remember exactly. It's been a few years, you know, and I cannot remember exactly what it was.

Q But in substance was it a comparison between an investment in land and other types of investment?

A It may have been.

Q Was there a comparison between the various rates of return on an investment in land and other types of investment if you recall?

A No, I couldn't say for sure.

Q Do you recall at the dinners that you attended in New Jersey whether at the end of the sales presentation any sales people in the room stood up and called holds on various pieces of property?

A Well, like when I bought my property --

Q I am talking.

You bought your property at Rio Rancho. I am talking about in New Jersey at the dinners you attended.

A It was all in the same category.

Q Let me focus your attention on the dinners that you attended in New Jersey.

At those dinners at the end of the sales presentation given by the speaker in the front of the room, did he call -- did sales people call holds on property?

A I think if they had been sold --

THE COURT: Wait.

Q Is the answer yesor no?

THE COURT: Did they or didn't they?

A They may have said hold. I don't remember the exact expression if somebody had bought the piece of property it was held for them.

Q Whether the word "hold" was used?

A It may have been, I don't remember that.

Q You attended about ten or twelve dinners?

A Yes.

Q When was the last dinner you attended, 1973?

A No.

Q '74?

A It may have been the beginning of '74 because we moved in the middle of '74. We moved in July.

Q The acreage that you still have amounts to what, one acre now?

A No, just a half acre.

Q That is the half acre you would like to build a third house with?

A Right.

Q Have you ever tried to resell any of your property?

A No, I am not interested in that.

Q You were not interested in reselling it?

A No.

MS. HYNES: No further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. SPRIZZO:

Q You were asked by Ms. Hynes about whether people said hold at these dinners and I believe you began to answer a question which you didn't finish because it was not responsive to the question.

When you bought your property, did you buy it at a dinner or a lunch?

A Yes.

Q Was the lunch at which you bought your property the same as the other dinners you attended?

A Almost identical, right.

Q Did anyone shout hold when you bought your property?

A Yes, because I wanted the particular pieces.

Q Based on your experience with the use of the word hold, the word hold indicated what to you?

A That it was my piece of property that I wanted this particular thing and I didn't want someone else to get it.

Q I think you testified about Unit 11.

A Yes.

Q Unit 11 is an even exchange area, is it not?

A Yes, it is.

Q That means you exchange one-half acre for one-half acre --

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A Right.

Q You are aware, I take it, that under your contract you were not entitled to paved roads. Your half acre for half acre did not entitle you to paved roads.

A Right.

MS. HYNES: At this point I would like Mr. Sprizzo not to lead and show her the contract instead.

THE COURT: Show her the contract and we

the same answer, Ms. Hynes. We are wasting time.

MR. SPRIZZO: I didn't realize there was an issue in this case.

MS. HYNES: I move to strike Mr. Sprizzo's statement.

THE COURT: There isn't any issue in this case about that, Ms. Hynes.

MR. SPRIZZO: I can't find it.

Q When you purchased your land I think you indicated on cross examination you were not interested in exchanging your half acre into one of the even exchange areas; is that correct?

A No, I wasn't. I had my own ideas of what I wanted. I knew what they had to offer and what the even exchange was, but I wanted certain things.

Q What was your understanding as to what you were entitled to exchange what for what?

A A half acre for another equivalent half acre. It didn't necessarily have paved roads or underground utilities. I knew that at the particular time.

Q So in Unit 11 which is now an even exchange area, there is more than your contract gave you?

A Yes.

MR. SPRIZZO: I have no further questions.

ojw

THE COURT: You may step down.

(Witness excused)

THE COURT: We will have a short recess and have your next witness after the recess.

(Recess)

(In open court - jury present)

THE COURT: Next witness.

MR. LAUER: Grete Vives.

MR. SPRIZZO: Judge, I may have to leave a little early this morning and Mr. Lauer and Mr. Arkin will cover for me and that is agreeable to my client.

GRETE VIVES, called as a witness by the defense, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. LAUER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LAUER:

XXX

Q Mrs. Vives, my name is Elliot Lauer and we have spoken before.

A Right.

Q Where do you presently live?

A I live at 703 Peachtree Road, Southeast Rio

Rancho, New Mexico.

Q What section of Rio Rancho is that in?

A Panorama Heights.

Q Are you married?

A Yes.

Q Is your husband employed?

A No, my husband is retired.

Q Are you also retired?

A I am also retired.

Q Where did you live before you moved to Rio Rancho?

A We lived in Jamaica, New York.

Q When did you first hear of Rio Rancho?

A In 1962.

Q How did that come about?

A Well, we received some brochure in the mail.

Q Did you make any inquiries about Rio Rancho after you received the brochure?

A Yes. My husband wrote to the Chamber of Commerce in Albuquerque.

Q Did you receive a reply?

A Yes, quite a favorable reply.

Q From the Chamber of Commerce?

A From the Chamber of Commerce.

Q Did you or your husband make any other inquiries about Albuquerque and the Rio Rancho area?

A My husband previously went to the 42nd Street Library to find out if there was some part within the United States where the climate would be dryer on account of my health.

Q What kind of research did he do?

A The only thing he could find out that New Mexico --

MS. HYNES: I object.

THE COURT: Wait. She cannot tell us what her husband found out.

Q Was there a particular reason why your husband was doing research on climates?

MS. HYNES: Objection.

THE COURT: Overruled because I assume the witness is going to tell the reason.

THE WITNESS: Am I too fast?

THE COURT: No.

A He had made inquiries because I became quite ill here in New York and I almost lost my sight. I am legally blind.

Q Did you eventually buy a half acre in Rio

Rancho in 1962?

A Yes, we did.

Q You read the contract?

A Yes, I read the contract.

Q Did you understand that you were buying raw land?

A Yes, definitely.

Q Didn't have utilities?

A The land we bought, no, it had no utilities whatsoever.

Q Did you also understand that you had a refund privilege?

A Yes, we understood that we had a refund privilege.

Q Did you understand what you had to do in order to exercise that six month refund privilege?

A Yes, we would either have to visit or we would have to think it over if we decided we would not want the land, we could have a ful refund.

Q Did you visit Rio Rancho within six months?

A No, we didn't.

Q Did you also understand that you had an exchange right?

A Yes.

Q What did you understand that exchange right to be?

A Well, I understood that either we could exchange that land for equal value at another section or if the section was fully built up or was being built up and had a higher value than the piece of land we owned, we might have to pay towards the new section.

Q If it had extra amenities?

A Right.

Q Why did you buy that half acre lot?

A Well, from what we began to know about New Mexico and find out, we decided to have a piece of land there that should the time come when we were to retire and we liked it there, we would want to build there.

Q Did there come a time when you and your husband visited Albuquerque and Rio Rancho?

A Yes, and that was in August 1964.

Q How did you come down to Albuquerque?

A We went by bus. I had never been west and decided to see as much of America as I could so we took the bus going down.

Q What did you do when you arrived in Albuquerque

A Well, we first went to the hotel and got settled and AMREP had a small office a few blocks down and we went to the office and introduced ourselves and told them why we had come; that we wanted to see where the piece of property was and how it was.

Q Did the representative of AMREP take you out to your property?

A Not that day. It was rather late and they didn't have a car, but they promised to pick us up the next morning.

Q Did they pick you up the next morning?

A Yes, they did. They picked us up.

Q Where did they take you?

A They took us first through Albuquerque and showed us Albuquerque and the beautiful university, which wasn't quite as large as now, and then they took us also to the Winrock Shopping Center, which was rather small at that time and had just opened.

Q Did you see the east side of Albuquerque?

A Yes, they showed us that.

Q Did there come a time when the representative of AMREP took you to Rio Rancho?

A Yes. After we had lunch in Albuquerque, this young lady took us to Rio Rancho.

Q Were you shown your property?

A Yes, and there was a gentleman there who took us out in a jeep because there were no -- there were roads, but they were not paved.

Q Was there much development in 1964 at Rio Rancho?

A It wasn't very much development. There was the land office and there was the first recreation center which had one of the first parties and a pool and about I would say three or four block long roads.

THE COURT: Pardon me.

When did you make this visit?

THE WITNESS: In August 1964.

THE COURT: Thank you.

Q About how many homes were there at Rio Rancho in 1964?

A Well, I would judge, as I remember, 25, 30, 32, a few model homes there, too.

Q Did anyone tell you when you were out at Rio Rancho in 1964 when your land was going to be developed?

A No, they only talked about future plans. They didn't say when it would be developed.

Q What was your impression of Rio Rancho in 1964?

A I loved it. It was just beautiful. It was an enormously blue sky and the sun was shining and there was a gentle wind and everything was immense and the air was so dry, it was very refreshing.

Q Did you eventually buy more land at Rio Rancho?

A Yes, we did.

Q You ended up with an acre in Unit 9?

A Right.

THE COURT: Let's have when she bought them. The dates.

Q When did you -- you bought the first half acre in 1962?

A The first half acre in 1962.

Q You bought a half acre in Unit 4 in 1964?

A Right.

Q And then you bought an acre in Unit 9 in 1966?

A That's right.

Q So you had a total of two acres.

A Two acres. Two half acres and one full acre.

Q Did you have occasion to attend a dinner party in 1966?

A Yes.

Q Where was the dinner party held?

A I think it was called the Surry Steak House on Union Turnpike.

Q What happened when you arrived at the dinner party?

A We went into the room where the dinner was supposed to be served and there was a gentleman who welcomed us and greeted us and said would we find ourselves a seat at a table.

Q Were there other people sitting at the table?

A Yes, it was a rather large table as I remember. There were about four or six more couples aside from us.

Q Was the salesman or saleswoman sitting at your table with you?

A I beg your pardon?

Q Was a salesman or saleswoman sitting at your table with you?

A No, not at our table.

Q Was there a speech that night?

A Yes, after we had eaten. Somebody made a speech and told us about Rio Rancho and New Mexico in general, about the climate, about Albuquerque.

Q Were any movies shown thatnight?

A Yes, right after the speech.

Q Do you recall what the speaker said or what the moves portrayed?

A Well, the movies showed Rio Rancho and there were some high officials. I don't remember whether it was the mayor at that time of Albuquerque or one of the state senators there and he made a speech about the land of enchantment and the sunshine and all the possibilities of growth and they showed also some families having a get-together. Families already lived there and showed some of their homes.

Q After the speaker finished speaking, did people jump up and shout things?

A No, no, not that time.

Q Do you recall salesmen at some point in time during the evening standing up and saying things?

A Well, after the movie was shown, people went to salesmen and at certain times when a particular area was mentioned or lot was mentioned, salesmen would lift his hand. I don't recall anybody standing up and actually shouting, but the salesman would lift their hand and would say, there is a hold on this particular lot or these people are interested in it or somebody reserved that. That I recall.

Q At that dinner at the Surry Steak House you bought one acre in Unit 9?

A Yes, at one of the dinners we bought a full acre.

Q Did your salesman shout hold?

A No, not that time.

Q Were there people at the dinner who did not buy land that night?

A Most of them did not. They walked out and they were thanked for coming and we will send you another invitation and if you like come to the next dinner.

Q Did you feel pressured into buying land?

A Not at all.

Q You had seen Rio Rancho and Albuquerque in 1964?

A Yes.

Q You went to this dinner party in 1966 and you heard the speaker and you saw the movies?

A Right.

Q Did you feel that the portrayal of Rio Rancho and Albuquerque was a fair and accurate portrayal?

A Yes, I felt so. I had not met many people at that time. They were very happy and friendly from that picture, of course, and the description, the actual picture of Rio Rancho as it was, the growth was a little larger. It had grown in the meantime, but the pictures showed it actually as it was.

Q Did you read the contract thatnight before you signed it?

A Yes.

Q Was there good lighting?

A The lighting was very good throughout except when the movie was shown.

Q What do you recall being said either in the movie or by the speaker about the growth of Albuquerque and its relationship toRio Rancho?

A That it had very potential growth, but that Albuquerque could only grow to the mountains and then eventually people would have to drift out to the northwest and Rio Rancho which is in the northwest.

Q Did you understand that to mean --

MS. HYNES: Objection to the leading.

THE COURT: Ask her what she understood.

Q Did you understand that to mean --

MS. HYNES: Objection.

THE COURT: Sustained. Ask her what she understood it to mean.

Q What did you understand that to mean?

A About the growth of Albuquerque? Well, that there was land available and that eventually as that land was used up by buildings, business or otherwise, that it would have to go out to the northwest because, after all, mountains are pretty high and you can only go into the very close near foothills.

Q You eventually moved out to Rio Rancho?

A Yes.

Q When was that?

A That was the end of September in 1973.

Q You have seen Albuquerque?

A Oh, yes.

Q You have seen it grow?

A Yes.

Q Do you feel the representation that was made to you in 1966 is coming true?

A Well, knowing Albuquerque as I do now, I find it was an understatement earlier in '66 because Albuquerque has really exploded. It's tremendous now compared to what it was.

Q Did you believe in 1973 that Albuquerque was growing towards Rio Rancho?

A Oh, yes. There were definite signs at that time already.

Q Do you believe that the statement that Albuquerque's future growth was towards Rio Rancho is true today?

A Yes, more so than before.

Q Why did you buy the additional acre and a half?

A Well,we saw the potential of Rio Rancho and we felt that even if we could not build where the land was that we had bought, that we might exchange it and perhaps build more property if we could.

Q Did you expect to make a profit on your purchase in a few years?

A Oh, not then, no.

Q You eventually exchanged your two half acre residential lots for two multi-dwelling lots?

A Yes, we did.

Q Where were the multi-dwelling lots located?

A They were in Section 11.

Q Did you have to pay an extra premium for the multi-dwelling lots?

A Yes, we did.

Q How much did you pay for the two lots over and above the exchange?

A We padi $410 towards two two lots.

Q What were you going to do with the two multi-dwelling lots?

A Well, we thought we might build two family houses there [illegible]

[illegible]

are your multi-dwelling lots [illegible]

A I would judge three to four blocks.

Q Did anyone ever tell you when your multi-dwelling lots would be developed?

A No, they only said in the eventual future meaning that when 11 was more built up, there might be a chance of being developed.

Q When did you make your final decision to retire to Rio Rancho?

A New Year's Eve 1972.

Q How did that come about?

A Well, my husband came home that night and said, I have had it. Next year we are moving to Rio Rancho.

Q You contacted the company?

A Yes, we talked about it when my husband might be able to get off to go out to Albuquerque and when we decided that he could make it the beginning of March, we contacted the company.

Q You flew out on a fly and buy program?

A Yes, that is what they called it.

Q Did you choose a house?

A Yes, we did. No, we had picked out a house from one of the catalogues that had been sent to us and knowing exactly what I could handle, we picked a certain house that was very comfortable for us.

COPY RECEIVED
[illegible] 1977
ROBERT B. FISKE, JR.
U.S. ATTORNEY
SO. DIST. OF N.Y.
by J May